United States Court of Appeals

for the Second Circuit

APPELLEE'S APPENDIX

B

Docket No. 74-1419

IN THE

United States Court of Appeals

For the Second Circuit

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

—*vs*—

ROBERT LEE DENSON,

Defendant-Appellant.

On appeal from the United States District Court
Northern District of New York

APPENDIX FOR APPELLEE,
UNITED STATES OF AMERICA

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(6631)

UNITED STATES COURT OF APPEALS
FILED
JUL 1 1974
A. DANIEL FUSARO, CLERK
SECOND CIRCUIT

PAGINATION AS IN ORIGINAL COPY

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PROCEEDINGS, dated Feb. 11, 1974.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

- -x
:
UNITED STATES OF AMERICA,
:
- against - :
73-Cr--194
:
ROBERT LEE DENSON, Jr.,
:
Defendant.
:
- -x

The trial in the above entitled matter was commended on February 11th, 1974, at the United States District Court in and for the Northern District of New York, at Utica, New York, at ten thirty o'clock a.m. before HON. LLOYD F. MacMAHON, United States District Judge sitting by designation, and a Jury.

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* * * * *

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

- -x

UNITED STATES OF AMERICA,

- against - : 73-Cr-194

ROBERT LEE DENSON, Jr.,

Defendant.

- -x

The trial in the above-entitled matter was continued, pursuant to adjournment, at the United States District Court held in and for the Northern District of New York, at Utica, N. Y., on February 13, 1974, at ten thirty o'clock a.m. before HON. LLOYD F. MacMAHON, United States District Judge sitting by designation, and a Jury.

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* * * * *

that it was someone else; is that it?

MR. MICHAELS: That is correct.

THE COURT: I will handle it. I will do it right in the introduction. So there is no dispute that there was a robbery and the question is whether this man was one of the robbers. All right?

MR. MICHAELS: Fine.

MR. WELCH: Your Honor, as you know, I have sought for an immunity order for the two co-defendants in this case. The government intends to call them tomorrow.

THE COURT: Yes?

MR. MICHAELS: If Your Honor please ---

MR. WELCH: Immunity doesn't attach until and unless they take the fifth amendment right. The sole question I have now is how Your Honor wishes to handle it.

THE COURT: I would think we should do that without the presence of the jury. I don't think that they should assert the Fifth Amendment in front of the jury. Why don't we put them on on a voir dire and have them assert it there and I will tell they can't do it so when they testify before the jury they can't do it.

MR. MICHAELS: Referring to voir dire you mean their direct testimony will be taken with the jury out?

THE COURT: Not all the testimony. Just the parts where they say we are going to take the Fifth Amendment.

MR. WELCH: We will get to the basic question where they will incriminate themselves and they will assert the Fifth Amendment.

THE COURT: And I will tell them that they have no right to take the Fifth Amendment, that they have been granted immunity, and when the jury comes in they will answer it under penalty of contempt. And we will have to proceed from there, if they follow my instructions.

Is that agreeable to you?

MR. MICHAELS: Let me think a minute, please.

Your Honor, I don't know how far I would get by saying I was not in agreement with that procedure. I think that probably the petit jury in being called upon to evaluate the credibility of the witnesses should be able to see the witnesses in full, from beginning to end of his testimony. And the reluctance of a witness to testify perhaps --- I don't know, I have not talked to these

witnesses. I didn't have an opportunity to talk to them. I don't know how they will appear. But I think the credibility of the witness should be judged on their whole appearance and the jury being able to determine by their manner from start to finish whether their testimony attaches credibility.

THE COURT: This is all right with me. But I was thinking of the effect of these witnesses taking the Fifth Amendment. No matter how much the scholars may think the Fifth Amendment is designed to protect the interest of the innocent. I don't believe in this business of fooling about it. I think ordinarily people having someone take the Fifth Amendment consider them as having committed a crime. But if you want it done in the open and have that appear to the jury, it is all right with me.

MR. MICHAELS: I would like to make it my choice now. If my mind changes can I let you know?

THE COURT: You let me know before they take the stand. Because once this thing starts you can't stop it.

MR. MICHAELS: I understand that. I understand that they will not be here until tomorrow.

THE COURT: I don't know what the relationship of these witnesses is to this man. Are they defendants?

MR. WELCH: Yes, Your Honor.

THE COURT: I think my observation is something that you should consider.

Are there any cases on how you handle this problem?

MR. WELCH: I found none. That is that I can go on the record as to Mr. Michael's position.

THE COURT: I think there should be something on the mechanics of it. I don't know of any but I would think there should be some somewhere. I know it is like a hearing on whether a confession is voluntary. But it just seems to me that this is a question of law that the court should rule on it and defer in the absence of the jury. Surely if that is your right you are free to waive it as long as you do it understanding it. If you want the other procedure this is all right with me.

MR. MICHAELS: I have a request. I don't think it needs be on the record. I don't know whether I am going to have to be doing any research quickly during the trial. What is the availability

Discussion concerning mechanics of ordering immunized testimony in Jury's presence.

14.

of this library to me in the evening?

THE COURT: It is open.

MR. MICHAELS: Because I don't know what is going to come up.

THE COURT: Will either of you have any requests to charge in this case?

MR. WELCH: At this time nothing but standard bank robbery requests.

THE COURT: You have a gun charge that is not a standard bank robbery request.

MR. WELCH: I will prepare a charge.

THE COURT: All right.

MR. MICHAELS: I will have no requests at this time. Depending on the proof I may have something, but I will have to be guided by the proof that comes in.

THE COURT: I am not talking about any standard, routine request. Simply, do you have something which you want me to charge the jury. If you do let me know. These things don't create themselves out of the blue. They have to be put together ahead of time.

All right.

MR. MICHAELS: Thanks.

(The following proceedings were had in open

* * * * *

That is the way the system works and that is the way it should work.

So I ask you to listen carefully. I ask you to be discriminating in your judgments on the quality of the testimony of the witnesses. And I believe if you do just that, when you are finished and you leave this courtroom to deliberate on a verdict that you will realize what I was talking about.

I pledge to you during the course of this trial you are going to see doubts; many of them. And I am going to call those doubts to your mind when this case is over. I am going to do my best to expose those doubts for you.

I hope you will listen carefully to all the proof, as I asked you, and I am confident your verdict will be a fair one.

Thank you.

THE COURT: All right, Mr. Welch.

MR. WELCH: Your Honor please, the United States calls Mrs. Mary Tallerico.

M A R Y R. T A L L A R I C O

called as a witness in behalf of the government being first duly sworn, was examined and testified

as follows:

DIRECT EXAMINATION

BY MR. WELCH:

Q Good morning, Mrs. Tallerico.

A Good morning.

Q When I ask you questions could you respond in a good, loud voice so the jurors can hear you and the people behind me can hear you also. Mrs. Tallarico how are you employed?

A I am a teller at the East Side office of the First Trust.

Q Could you speak louder I could barely hear you.

A I am a teller at the East Side office of the First Trust, Syracuse, New York.

Q Where is that located?

A Up on the East Side.

Q Is that Cherry and Lexington?

A Yes. Cherry and Lexington.

Q Were you so employed on September 12, 1973?

A Yes, I was.

Q Directing your attention to that date, September 12, 1973, at approximately three p.m. could you tell us what, if anything, took place at the bank at that time?

A We were robbed.

Q When you say "we were robber" can you tell us who you mean by "we"?

A I had a customer. The customer just left.

Q Do you know who the customer was?

A The lady next door.

Q Do you recall her name?

A Chris, I can't pronounce her name. I looked at the clock. It was after three. We usually close at three fifteen on the outside, then we do our work. I looked up and saw three fellows. Two had masks on, and I was real scared, and one of the fellows jumped up on my counter, pointed a rifle. Then the other jumped over the counter and went over to the auto teller and grabbed him and brought him on top, and then went to my widdow and took my money out of my drawer, and then went to the next teller and took his money. Then he came back to my drawer again, and that is about it. I guess it seemed like an eternity but it was not too long.

Q Can you tell us whether the three men were white or black?

A They were black.

Q And two were wearing masks, did you say?

A Yes.

Q The fellow that carried, what you said was a rifle, was

he wearing a mask or not?

A I am not absolutely sure.

Q Could you describe to the ladies and gentlemen of the jury what that rifle was, what it looked like?

A It looked like a hunging gun, like my husband has. It was cut off or something.

THE COURT: One barrel?

THE WITNESS: Two barrels.

THE COURT: And it was short?

THE WITNESS: Yes.

BY MR. WELCH:

Q Do you recall if there was any wood sticking out from under the barrel, if you recall?

A No.

Q Did you see -- besides this man did you see anyone else have anything in their hands when they came into the bank or where you were?

A A shopping bag from Dey Brothers. It was blue.

Q Could you tell the ladies and gentlemen what you mean by Dey Brothers?

A There is a department store in our city and they have shopping bags with "Dey Brothers" on them.

Q Now when they took the money from the drawers who else of the bank was present at that time?

A There was our manager.

Q What is his name?

A Mr. Weatherup.

Q And anyone else?

A Our desk girl, Linda, and we had two male tellers.

Q You mentioned two drawers that they took money out of.

A Yes.

Q Whose drawers were they?

A Mine, Mary Tallerico and Bob Hours.

Q Was Bob House there at the time?

A Yes, he was there.

Q Do you recall whether or not they said anything when they came in?

A I don't know which one said it but they said "Hands up."

MR. MICHAELS: I object unless she specifies who said it.

THE COURT: If she can.

Q Do you recall?

A No. Some said "Hands up."

MR. MICHAELS: Objection.

THE COURT: Overruled.

Are you sure it was one of the three?

THE WITNESS: Yes.

BY MR. WELCH:

Q Did the one man say anything as he pointed the gun?

A I don't remember, because I shook so. Was that scared. And I kept saying to myself "don't faint; they might shoot you." That is what I kept thinking.

Q Mrs. Tallerico could you tell the ladies and gentlemen of the jury what the outside of the bank looks like? Are there any buildings near that bank?

A There is a grocery store right next door. It is busy. It is on the corner.

Q The bank is on the corner?

A The bank is on the corner? No. There is a bus stop and there is a fence around the corner so no one will fall when they are walking. The auto teller is there

Q Is it a fence or railing?

A A railing.

THE COURT: Is this in a shopping plaza?

THE WITNESS: No. It is in the side -- it is the corner of Cherry Street, Lexington Avenue and East Genesee.

THE COURT: Where is that?

THE WITNESS: Up near the Waldorf.

BY MR. WELCH:

Q Mrs. Tallerico do you recall what the weather was that day?

A It was a nice day.

Q Was it sunny out?

A Yes.

Q At the time of the bank robbery the sun was still out?

A Yes.

MR. WELCH: Your Honor may I approach the witness?

THE COURT: Yes.

BY MR. WELCH:

Q Mrs. Tallerico I hand you what has been marked as Government's Exhibit 1 for Identification. Can you tell the ladies and gentlemen of the jury, does that reflect the outside of the bank as it was on September 12th, 1973?

A Yes.

(Photograph marked as Government's Exhibit No. 1 for Identification.)

Q Does that reflect the outside of the bank as it was on September 12th?

A Yes.

Q Is that an accurate reflection of the bank as it was on September 12th?

A Right.

MR. WELCH: Your Honor, the government moves Exhibit No. 1 into evidence.

MR. MICHAELS: May I ask a question on voir dire? May I approach the witness?

THE COURT: Yes.

VOIR DIRE EXAMINATION

BY MR. MICHAELS:

Q Mrs. Tallerico, good morning.

A Good morning.

Q In connection with this photograph are there any other windows in front of the bank other than shown in that photograph?

A There is one here (indicating) but you can't look out it.

Q These windows here seem to be longer than regular windows?

A Yes.

THE COURT: When you say "here" it means nothing. When you say "here" mark where she is pointing. Take a pen or marker.

Q Would you, Mrs. Tallerico, using this felt pen mark ---

THE COURT: Put an "x" there.

Q Put an "x" were this window is that is not shown.

A It is shown. It is right here. (Indicating)

Q So what you are saying is right next to the "x" that you placed?

A Yes.

Q Is the only other window in front of that bank?

A Right.

Q In connection with that photograph do you agree it appears as if the front door appears to be blocked with some sort of opaque patch or ---

A It just says First Trust Bank.

THE COURT: Doesn't it speak for itself, Mr. Michaels?

Q I can't tell. It may be but I can't tell. There seems to be something there. I am trying to find out if the windows look like this.

A There is a piece of paper there so when you are walking you won't walk in the glass.

Q Am I correct that you can't see from the outside in or the inside out?

A Oh no. You can look through it. The shade is there now. It was not pulled down.

Q Was the shade pulled down during this incident?

A No. The bank was still open.

Q The venetian blinds appear to be pulled down in the photograph?

A Yes.

Q Were they pulled down during the incident or were they up like the Venetian blinds in this room, that you can see through?

A No, I believe they were pulled down.

MR. MICHAELS: I will object to it as I

don't believe it represents the appearance of the bank at that time.

THE COURT: I will overrule your objection with the understanding it is not received for a picture of the bank the way it looked at the time of the robbery but with respect to the windows and the doors.

BY MR. WELCH:

Q Mrs. Tallerico it is a fact that the exhibit reflects the location of the railing protecting the drive-way at that time?

A Yes, the railing is right there (indicating).

Q And that is the way it was on September 12th?

A Right.

Q Now, Mrs. Tallerico on September 12th did the First Trust and Deposit, or your branch, have bank surveillance cameras inside the bank?

A Yes.

Q Do you know if they were in operating order that day?

A Yes.

MR. WELCH: May these be marked as exhibits next in order.

(Photographs marked as Government's Exhibits 2 thru 9 inclusive for identification.)

Q Mrs. Tallerico I am handing you a group of exhibits

2 through 9 for identification. You testified earlier about three men coming in and robbing the bank. Will you just go through those exhibits and let me ask you this: Have you gone through them before?

A Yes, I have.

Q And how recently?

A This morning.

Q Just look through those and satisfy yourself that these are the same as you saw this morning.

A Yes they are.

Q Now, Mrs. Tallerico do those photos accurately depict the way those three men looked to you that day?

A Yes.

MR. MICHAELS: I object to that. The procedure is improper. I don't know that he has really established that she is competent to testify to those photographs.

THE COURT: You mean he has not laid a foundation?

MR. MICHAELS: That's right.

THE COURT: Sustained.

Q Is there anything about those photographs -- strike that remark, please. Mrs. Tallerico you testified earlier that the bank surveillance cameras were working; is that right?

A Yes.

Q Will you tell the ladies and gentlemen of the jury how you know that?

A They took some money from my drawer and that starts the camera running.

MR. MICHAELS: Objection. She is not an expert on that.

THE COURT: Overruled. She doesn't have to be an expert if she knows.

THE WITNESS: You can hear the clicking of the camera. It is a wonder that they didn't hear it.

BY MR. WELCH:

Q All right. Now, Mrs. Tallerico the pictures that you have in your hands then, do they accurately represent the way you recall those men, those three men, looking that day?

A Yes.

MR. MICHAELS: I object to it.

THE COURT: Overruled.

BY MR. WELCH:

Q Now, Mrs. Tallerico could you tell the ladies and gentlemen of the jury, are these pictures complete coverage of what those men did while they were in the bank?

A No. Because it only shows the front lobby. It doesn't show what happened behind the desk.

Q So your testimony is not that --- strike that. Did the men do other things other than as depicted in these photographs?

A One Jumped over and tried to get into the managers office and he could not. It was locked.

Q Is it fair to say that these are excerpts of what took place that day?

A Yes.

THE COURT: Is this a movie camera?

THE WITNESS: Yes.

THE COURT: And these are clips from a movie camera?

THE WITNESS: Right. Right.

MR. WELCH: United States offers Exhibits 2 through 8 in evidence. Two through nine.

MR. MICHAELS: May I see them?

MR. WELCH: Yes. (Hands exhibits to Mr. Michaels.)

MR. MICHAALS: May I have a couple of questions?

THE COURT: Yes.

VOIR DIRE EXAMINATION

BY MR. MICHAELS:

Q Mrs. Tallerico referring to Government's 2 for identification and particularly to the second photograph and I direct you to this one man in the photograph next to the counter.

A Yes.

Q Will you tell us if that is the man that jumped up on the counter, over the counter?

A I couldn't tell.

MR. MICHAELS: I object to all the photographs because as the Court will see she is incapable to identify --- her testimony was that these photographs ---

THE COURT: I heard her testimony.

MR. MICHAELS: It is not verified by the photographs. She is unable to testify from them. She is actually not accurate on them.

THE COURT: Overruled.

(Government's Exhibits 2 through 9 for Identification received in evidence.)

MR. WELCH: I have no further questions, Your Honor.

CROSS EXAMINATION

BY MR. MICHAELS:

Q Mrs. Tallerico did you testify before the federal grand jury? Perhaps questioned by Mr. Welch or one of the

other U. S. Attorneys?

A Today?

Q No. Probably a couple of months ago.

A No. Yesterday they called me, but that is all.

Q Mrs. Tallerico have you ever given a written statement to anybody?

A To a police officer the day of the robbery.

THE COURT: I didn't hear what her answer was whether she testified before the grand jury.

MR. MICHAELS: Her answer was no.

THE WITNESS: No.

BY MR. MICHAELS:

Q The only statement you have ever made before today is that you did make a statement to a police officer?

A The day of the robbery.

Q Was it a federal police officer or a local officer?

A Before a federal officer.

Q Do you recall who it was?

A No I don't.

Q Do you recall, -- it was a written statement that you signed?

A Yes.

Q Have you seen that statement since you made it?

A Yes.

MR. MICHAELS: And I guess Mr. Welch is

going to give it to me.

THE CLERK: It is marked 3501.

THE COURT: Let me see it.

MR. MICHAELS: 3501?

THE CLERK: 3500 material, yes.

BY MR. MICHAELS:

Q Mrs. Tallerico I show you ---

MR. MICHAELS: Is this the attorney's exhibit?

THE COURT: Call it 3501.

(Statement by Mrs. Tallerico marked as Exhibit 3501.)

BY MR. MICHAELS:

Q I show you 3501, which is a photocopy of a summary of a statement given by you to the Federal Bureau of Investigation; is that correct?

A Yes.

Q Do you agree with me that you told the F.B.I. when you were first interviewed that the three black males that entered your bank on the day in question were all approximately twenty years of age? You agree that you told them that?

A I said in their twenties.

Q Is the statement inaccurate when it says twenty years of age?

A I said in their twenties.

Q You also told the F.B.I. that all three males were approximately five foot six?

A I don't remember that I said that.

Q Does the statement show it?

A Yes.

Q Do you agree that the statement is accurate?

A It is supposed to be.

Q You did tell the F.B.I. that all three males that entered the bank were five foot six?

A I must have said it. Right.

MR. MICHAELS: I have no further questions.

THE COURT: Any redirect?

MR. WELCH: No redirect.

THE COURT: You are excused.

MR. MICHAELS: Thank you very much.

THE COURT: You are excused, Mrs. Tallerico. Thank you.

(Witness excused.)

MR. WELCH: United States calls Mrs. Christine Tzetzis.

C H R I S T I N E T Z E T Z I S

called as a witness in behalf of the Government being first duly sworn was examined and testified

as follows:

DIRECT EXAMINATION

BY MR. WELCH:

Q Is it Mrs. Tzetzis?

A Yes.

THE COURT: Please keep your voice up so we can all hear you.

THE WITNESS: Yes.

Q Mrs. Tzetzis could you tell the ladies and gentlemen of the jury how you are employed?

A Right.

Q Yes. What do you do for a living?

A Lexington Avenue grocery store.

Q A grocery store on Lexington Avenue?

A Yes.

Q Can you tell them where that is located on Lexington Avenue?

A Next door to the First Trust bank.

Q Would that be in the area of Cherry and Lexington?

A Cherry and Lexington.

Q And next door to the bank?

A Right.

Q Do you run that store or work there?

A We run the store.

Q When you say "we" who is that?

A My husband.

Q Did you run that store on September 12, 1973?

A Yes.

Q Were you at the store on September 12, 1973?

A Yes.

Q Directing your attention to that date, September 12, 1973, at approximately three p.m. do you recall what you were doing at that time?

A Three p.m.?

Q Yes.

A I went to deposit.

Q Will you continue telling the ladies and gentlemen of the jury exactly what you did and what you saw?

A I went to deposit and I saw three, because they were standing, three guys were outside the bank.

Q And were they standing by something?

A The rails.

Q Standing at the rail? Which rail? The rail by the automobile teller?

A No, outside the bank.

THE COURT: By the auto teller's rail. Could you show us in the picture where they were standing?

BY MR. WELCH:

Q Mrs. Tzetzis I am going to approach you with a photo

now marked Government's Exhibit 1 and ask you to take this pen and put a mark on this picture where you saw those three men standing.

A (Indicating and marking) Right here. This is where it is.

Q You put a mark right in the lower left hand corner there?

A Right.

Q Could you tell us what the three men looked like as best you can recall? Were they white or black men?

A Black.

Q Were they young or old men?

A Young.

THE COURT: How were they dressed? Can you tell us?

THE WITNESS: I can't remember. No.

THE COURT: How long did you look at them?

THE WITNESS: A few minutes. I went next door to deposit.

BY MR. WELCH:

Q Did they have anything in their hands when you saw them? When you went to make the deposit?

A I can't remember.

Q Did you make the deposit?

A Yes.

Q When you came out of the bank where did you go?

A Next door, to our store.

Q Do you recall anything happening after you went back to the store?

A Yes. I was standing to the door so I saw three guys running. They had Dey Brothers bags.

Q They had Dey Brothers bags?

A Yes.

Q Were they different from the other three guys that you had seen before you entered the bank?

A Same guys.

Q How many bags did they have?

A I don't know. I saw two bags, I think. I don't know about the other.

THE COURT: Two of the men were each carrying a bag?

THE WITNESS: Yes.

THE COURT: And the third man you don't know what he was doing?

THE WITNESS: I don't remember the third one.

BY MR. WELCH:

Q When you first went into the bank and you saw them did they have anything in their bags?

A No.

Q Do you recall seeing their faces as they came out of the bank?

A (No response.)

Q What did you see after they came out of the bank? Which way did they go?

A To the front of our store, they ran.

Q Were they walking or running?

A Running.

Q You get a chance to see their faces at that point?

A No.

Q Besides those three men do you recall anyone else being in front of the bank at that time?

A There was one waiting for a bus over there. I don't know.

THE COURT: Do you recall how many people were waiting for the bus?

THE WITNESS: No.

THE COURT: But there was one, at least one?

THE WITNESS: Maybe more than one.

THE COURT: Maybe more than one.

BY MR. WELCH:

Q And do you recall what kind of a day that was; what the weather was outside, Mrs. Tzetzis?

A Sunny.

Q Could you tell us how long you were in the presence of the three men on the railing?

A No.

Q About how long were they in your presence?

A What is that?

Q How long did you see them?

A Just a few minutes. I go next door.

Q If you saw any of those men today do you think you could identify them?

A No.

MR. WELCH: I have no further questions, Your Honor.

MR. MICHAELS: I understand, Mr. Welch that Mr. Evans has already been given her statement.

(Statement of Witness Tzetzis marked as Exhibit 3502.)

MR. MICHAELS: If I may just have a minute, Your Honor.

THE COURT: Yes.

(Mr. Michaels peruses statement.)

MR. MICHAELS: I have no questions, thank you. Thank you very much.

THE COURT: You are excused. Thank you.

(Witness excused.)

MR. WELCH: If Your Honor please, may I have the Court's permission to approach the jury and let them examine these exhibits?

THE COURT: Just hand them to them.

MR. MICHAELS: May I hold up Mr. Welch for a second. I would like to ask the Court's indulgence. In view of the identification and cross examination which will be coming up with a further witness, I think it would be improper at this time, particularly since I have objected and they were received over my objection, if the exhibition of two through nine could be held until Mr. Weatherup is examined.

MR. WELCH: Your Honor please, the government has no intention of calling Mr. Weatherup.

THE COURT: I think it is better to get whatever identification we can before you show the jurors the inside of the bank. Show them the outside of the bank, which is Exhibit 1. And then we will take a short recess.

(Government's Exhibit 1 in evidence shown to the jurors.)

THE COURT: All right. We will take a short recess, at this time. The jury may retire.

(At this point the jury retired from the

Stipulation re: FDIC Insured Bank and amount taken. 47

courtroom and a recess was taken, after which the trial was resumed.)

MR. WELCH: If Your Honor please, at this time the United States requests permission to read to the jury a stipulation.

THE COURT: All right.

MR. WELCH: (Reading):

"It is stipulated that if called as a witness Mrs. Chauncey Tortora would testify that she is an auditor for the First Trust and Deposit Corporation and that her audit disclosed that on September 12, 1973, the East Side branch of the First Trust & Deposit Corporation at Cherry and Lexington Avenue, Syracuse, New York, sustained a robbery loss of $23,414. And if called as a witness Mr. Richard W. Russell would testify he is the Secretary of the First Trust and Deposit Company of Syracuse, and that the deposits of the First Trust and Deposit Corporation, including those of the East Side Branch at Cherry and Lexington Avenue, are insured by the Federal Deposit Insurance Corporation."

THE COURT: At this time we will take our luncheon recess. We ran into a delay with

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AFTERNOON SESSION

APPEARANCES: Same as morning session.

THE CLERK: Bring the jury in.

(At this point the jury was brought into the courtroom and seated in the jury box.)

MR. WELCH: If Your Honor please, the United States calls Alton Isaac to the stand.

ALTON ISAAC

called as witness in behalf of the Government being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. WELCH:

Q Now, Alton, keeping your voice up good and loud so that these people in the jury box can hear you, will you tell us how old are you?

A Twenty.

Q We couldn't hear that.

A Twenty.

Q And where do you live?

A East side of Syracuse.

Q East side of Syracuse, New York?

A Yes.

Q Did you live there during September of 1973?

A Yes.

Q Mr. Isaac do you know where the First Trust and Deposit bank is on Cherry and Lexington Avenue, in the City of Syracuse, New York?

A Yes.

Q About how far away in city blocks is it to that bank?

A About 4.

THE COURT: Please keep your voice up. I am sure you can talk louder than that.

THE WITNESS: I have a cold.

BY MR. WELCH:

Q Mr. Isaac how much education have you had?

A Through high school.

Q You graduated from high school?

A Yes.

Q Could you tell the Court and jury -- I heard you mention something about your cold -- how was your health back in September 1973?

A Good.

Q Did you ever wear glasses?

A No.

Q Did you ever have to have any help with your hearing?

A No.

Q So you could see and hear in September 1973?

A Yes.

Q All right, Mr. Isaac, I direct your attention to September 12, 1973, at approximately three p.m. Can you tell the ladies and gentlemen of the jury what you were doing at that time on September 12, 1973?

A I was standing on the corner by the bank waiting for a bus.

Q Which bank is that?

A First Trust.

Q Is that the one at Cherry and Lexington?

A Yes.

Q Do you remember what kind of a day it was? What the weather was?

A Fine.

Q Was the sun out?

A Yes.

Q Will you tell the ladies and gentlemen of the jury while you were waiting for the bus in front of the bank what if anything took place?

A This guy walked up to me and asked me would I do him a favor, and I said "Yes". And I said "What"? He said, "If you see a cop tap on the window." I said, "Okay."

MR. MICHAELS: I didn't hear the last part.

(The Court Reporter repeated the answer as above recorded.)

THE COURT: Mr. Welch why don't you stand

over at the end of the jury box so that he will have to speak up.

BY MR. WELCH:

Q Now, Mr. Isaac, this man that came up and asked you to tap on the window, was anyone else with him when he asked you that?

A With me?

Q With him or with you?

A Yes. My nephew.

Q How old is your nephew?

A Four.

Q How about the man that spoke with you, was anybody with him?

A Yes.

Q How many people were with him?

A Two more.

Q About how long were those three men, the one who spoke with you and the two with him, how long were they in your presence that afternoon?

A About four or five minutes.

Q About how close did they come to you, particularly the individual who spoke to you, how close did he get to you?

A Close.

Q Did he get this close to you?

A Closer.

Q Closer. Did he get this close to you?

A About that.

Q About like this?

A Yes.

THE COURT: Indicating about three feet.

MR. WELCH: Thank you, Your Honor.

THE COURT: Was he looking right at you?

THE WITNESS: Yes.

THE COURT: Were you looking right at him?

THE WITNESS: Yes.

THE COURT: How long did you look at him? Can you tell us that?

THE WITNESS: I don't know. I don't remember.

THE COURT: Could you count -- count to yourself about how many seconds it would be? One, two, three, four?

THE WITNESS: I don't remember.

THE COURT: You don't remember?

THE WITNESS: No.

THE COURT: All right.

BY MR. WELCH:

Q Mr. Isaac this fellow that spoke to you in the words that you just gave us, did he stand with you for any length of time before he said that?

A I didn't hear you.

Q You just told us what the man said to you and what you said to him. Was he next to you and you looking at him in addition to when he was speaking to you, either before he spoke to you or after he spoke to you, were you standing near him?

MR. MICHAELS: I object to that form.

THE COURT: I will allow it. Go ahead.

Q How long were they in your presence altogether?

A This day?

THE COURT: Can you estimate. One minute? Less than a minute?

THE WITNESS: No.

Q Mr. Isaac the fellow who spoke to you on September 12, about three o'clock that day, have you ever seen him prior to that time when he spoke to you?

A In Thorndem[illegible] Park.

Q You saw him at Thornden [illegible] Park?

A Yes.

Q What was he doing when you saw him at Thornden Park?

A Playing basketball.

Q You play basketball with him?

A No.

Q You ever see the other two fellows with him prior to that day?

A No.

THE COURT: How many times had you seen him play basketball?

THE WITNESS: About once.

THE COURT: How many?

THE WITNESS: Once.

THE COURT: How long were they playing basketball?

THE WITNESS: I didn't stay around that long.

THE COURT: You must have stayed around some time. About how long?

THE WITNESS: About five minutes.

THE COURT: And you watched him play basketball?

THE WITNESS: Yes.

THE COURT: How long before he came up to you on the corner was that?

THE WITNESS: When?

THE COURT: You said you saw him playing basketball. How long after was it that you saw him on the corner?

THE WITNESS: It was not the same day.

THE COURT: A couple of days? A week? Can you tell us?

THE WITNESS: I don't remember.

THE COURT: Try hard.

THE WITNESS: I don't remember.

THE COURT: Was it that summer?

THE WITNESS: Perhaps.

THE COURT: What?

THE WITNESS: Yes.

THE COURT: Where were you playing basketball, outdoors or indoors?

THE WITNESS: Outdoors.

THE COURT: On a basketball outdoors court?

THE WITNESS: Yes.

THE COURT: On a sunny day?

THE WITNESS: I can't recall that.

THE COURT: Can you recall whether it was that summer?

THE WITNESS: Yes.

THE COURT: Was it that summer?

THE WITNESS: Yes.

THE COURT: WITH whom -- was it early in the summer of late in the summer?

THE WITNESS: Early in the summer.

THE COURT: Early in the summer. Would it be June, sometime in June, or July?

THE WITNESS: I don't remember.

THE COURT: All right.

BY MR. WELCH:

Q Besides the time you saw him playing basketball, you see him at any other place prior to that day in front of the bank?

A No. I don't think so.

Q How the man who spoke to you, can you tell the ladies and gentlemen of the jury, the best of your recollection, what he looked like?

A A black male, about six feet tall, large shoulders.

Q How about his face, Mr. Isaac? Was there anything particular about his face that you might recall?

A No.

Q Do you know if he had any scars, moustache, beard, anything of that nature?

A He had a little beard.

Q A little beard did you say?

A Yes.

Q We can't hear you down here. Did he have any moustache?

A No. I didn't see any.

THE COURT: You say a little beard. A beard like you got?

THE WITNESS: No, not that much.

THE COURT: Not that much.

BY MR. WELCH:

Q All right. Now when they first came up to you, those three men, did they have anything on their faces at that time? Were they wearing sun glasses or anything covering their faces?

A Yes; sun glasses.

Q How about the man who spoke to you; he have anything on his face when he came up and spoke to you?

A I can't remember.

Q At any time while you were waiting for the bus did you see those three men put anything on their faces?

A No.

Q All right, Mr. Denson -- excuse me, Mr. Isaac, the man who came up to speak to you in front of the bank, is he in court today?

A Yes.

Q Will you point him out to the ladies and gentlemen of the jury?

A (Indicating) There.

Q What is he wearing?

A Blue.

MR. MICHAELS: Objection. He is not even looking at him. He is looking out that way (indicating) and pointing this way (indicating).

THE COURT: Let the record indicate he identified the defendant.

BY MR. WELCH:

Q Now prior to that time when Mr. Denson came up to you and asked about knocking on the window if you saw -- well I don't remember what you told us. At the time when Mr. Denson came up and spoke to you, had you talked to Mr. Denson at all about robbing that bank?

A No.

Q Had you had any conversation with any of those three men that day prior to the time in front of the bank?

A No.

Q Did you see them go into the bank?

A Yes.

Q Tell us what you saw after they spoke to you?

A I saw them go into the bank, stay about three or four minutes and come out.

THE COURT: Mr. Reporter, read that to me.

(The Court Reporter repeated the answer as above recorded.)

THE COURT: I can't hear you. Please speak up.

BY MR. WELCH:

Q Keep your voice up so everyone can hear you. When you saw them go into the bank they have anything in their hands?

A I seen a bag.

Q What kind of a bag?

A Blue bag.

Q Anything else about that bag that you recall?

A No.

Q Did it have any writing on it?

A Might have had "Day Brothers" on a it.

MR. MICHAELS: I object to what it might have had.

THE COURT: The best you can remember. Don't guess. You see any writing on it?

THE WITNESS: Yes.

THE COURT: What did you see?

THE WITNESS: Day Brothers.

BY MR. WELCH:

Q When they came out of the bank in three minutes or so that you just mentioned, they come out of the bank -- or how did they come out of the bank?

A Running.

Q They were running? You will have to speak louder.

A Yes.

Q Did they have anything in their hands when they came out of the bank?

A I seen a bag and a gun.

Q How about the man who spoke to you prior to going into

the bank was he carrying anything?

A I can't remember.

THE COURT: Did you see that man go into the bank?

THE WITNESS: Yes.

THE COURT: Did you see that man, the defendant here, go into the bank?

THE WITNESS: Yes, I seen him go in.

THE COURT: Did you see him inside?

THE WITNESS: Did I see him inside?

THE COURT: Right. Could you see inside the bank?

THE WITNESS: I didn't look in the bank. I seen them go in.

BY MR. WELCH:

Q When these three men came running out of the bank, you say they were carrying a bag and a gun. Can you tell us who was carrying the bag and who was carrying the gun?

A I can't remember who was carrying the bag, but this other dude was carrying the gun.

Q By "this other dude" you mean someone other than Mr. Denson was carrying the gun?

A Yes.

Q When they came out of the bank you notice anything on

their faces?

A I didn't pay attention.

Q When they came out of the bank did you see which way they went?

A Down Lexington.

Q What?

A Down Lexington.

Q Is that away from Cherry or towards Cherry Street?

A Away from Cherry.

Q Now, Mr. Isaac, did there come a time later on that day, on September 12, when you were interviewed by any police agencies or the F.B.I.?

A Pardon?

Q Later on that day, after you saw Mr. Denson go into the bank and come running out, were you subsequently interviewed by some police agency?

A Later on in the day?

Q Yes.

A Later on that day.

Q Did they show you any photographs?

A Yes.

Q Do you have any idea of the number of photographs they showed you?

A No. It was a lot.

Q Was it more than three?

A Yes.

Q And out of those photographs did you pick a photograph of the defendant Denson?

A Yes.

Q Now where was that, do you recall? Was that at the Syracuse Police Department of the F.B.I.?

A Police Department.

Q Was that in the presence of the police officer or the F.B.I. agent?

A Police officer.

Q Now on September 13th, the day after the robbery, were you interviewed by F.B.I. agents?

A Yes.

Q Did they show you any photographs?

A Yes.

Q Do you have any idea how many of those photographs were shown to you by the F.B.I.?

A About nine.

Q Do you remember whether or not you picked out any photographs from those?

A Yes.

Q Was Mr. Denson's one of the photographs that you picked out?

A Yes.

THE COURT: Was he one of them or was he

the only one?

THE WITNESS: Pardon?

THE COURT: How many photographs did you pick out?

THE WITNESS: One.

THE COURT: Just one?

THE WITNESS: Yes.

BY MR. WELCH:

Q During the time that the Syracuse Police Department or the F.B.I. were showing you photographs, did you pick out any other photographs than Mr. Denson's?

A I didn't hear you.

Q During the time the Police Department or the F.B.I. were showing you photographs, did you pick any other photographs other than Mr. Denson's picture?

A Yes.

Q Can you tell us whose pictures those were?

THE COURT: When? On which occasion? Your questions are compounded. We don't get any definite answer. Take them one at a time.

BY MR. WELCH:

Q Mr. Isaac at the time you were viewing photographs for the Syracuse Police Department did you pick out a photograph of either of the other two men that were with Mr. Denson?

A Yes.

Q Did you pick out a picture of one of the other men or both of them?

A Both of them.

Q So with the Syracuse Police Department you picked out at least three pictures; is that correct so far?

A At the F.B.I. office I picked out one.

Q Let's first talk about the Syracuse Police Department. How many pictures did you pick out altogether?

A Three. Three pictures altogether.

Q At the F.B.I. office ---

THE COURT: Wait a minute now. How many pictures did you pick at that time, when you were at the Police Department?

THE WITNESS: I don't --- how many did I pick?

THE COURT: How many were shown you?

THE WITNESS: I don't know what you mean.

THE COURT: You say you picked out three. Were you shown more than three?

THE WITNESS: Yes.

THE COURT: How many more, can you remember?

THE WITNESS: A box.

THE COURT: What is that?

(The Court Reporter repeated the answer

above recorded.)

THE COURT: A box?

THE WITNESS: Yes.

THE COURT: How big a box?

THE WITNESS: (Indicating) Like that.

THE COURT: As big as this? (Indicating)

THE WITNESS: Yes.

THE COURT: With as many pages as the book has now?

THE WITNESS: Yes.

THE COURT: And each one -- a photograph on each page?

THE WITNESS: Yes.

THE COURT: More than one photograph on a page?

THE WITNESS: Yes.

THE COURT: How many photographs on a page?

THE WITNESS: I don't know.

THE COURT: I want to say to the ladies and gentlemen of the jury, don't think I have any views in the case because I am asking questions. I am simply trying to get at a search for the truth here.

BY MR. WELCH:

Q Now, Mr. Isaac, directing your attention to last Friday, February 8th, 1974, did you have occasion to go to the Federal Building in Syracuse, New York?

A Did I what?

Q Did you have occasion to go to the Federal Building in Syracuse, New York?

A Yes.

Q Were you shown any photographs that day?

A Yes.

Q Do you know how many photographs you were shown on that day?

A Twenty-one.

Q And out of those twenty-one pictures did you pick any of the people involved in that bank robbery?

MR. MICHAELS: Objection. I don't understand the relevancy of what he did last week.

THE COURT: I will overrule it.

Let the record reflect when I said to the witness as big as this book, I was referring to the Judge's sheet book, which is eight by ten and about one and a half inches thick.

BY MR. WELCH:

Q When you said you saw twenty-one pictures, did you pick any of those pictures out of the twenty-one?

A Yes.

Q How many pictures did you pick?

A One.

Q Which picture was that?

A His. (Indicating defendant.)

MR. WELCH: I have no further questions, thank you.

CROSS EXAMINATION

BY MR. MICHAELS:

Q Mr. Isaac how many times since September 21, 1973, how many separate times have you been interviewed by somebody from the Syracuse Police Department?

A I didn't get your question.

Q How many times have you, since September 12, 1973, the date of this incident you just have been talking about, how many times have you talked to members of the Syracuse Police Department about this case?

A I can't recall.

Q More than one?

A Yes.

Q More than two?

A Perhaps.

Q More than three?

A Yes.

Q Let's keep going. More than four? Would it be about four or five?

A I can't recall.

Q All I want to do is find out, Mr. Isaac. You said it was more than three and I said "four" and you said you were not sure.

A Yes.

Q And I am talking about the Syracuse Police Department. Okay. How many separate times have you gone to the Public Safety Building in Syracuse and talked to the Syracuse Police about this case?

A How many times I went there?

Q Yes.

A Once.

Q When was that?

A That night.

Q September 12th?

A Yes.

Q And that one time you talked to the Syracuse Police Department detectives again?

A No.

Q How many times have you separately met with agents of the F.B.I.?

A A lot.

Q You met them on the 12th?

A What do you mean?

Q Isn't it a fact that the first time that you had contact

with anybody investigating this was with an F.B.I. agent?

A Yes.

Q He came to your house about five o'clock?

A Yes.

Q So the first person you talked to was a man from the F.B.I.?

A Yes.

Q And the next people you talked to was the Syracuse Police Department?

A Yes.

Q And then the next people you talked to was the F.B.I.?

A Yes.

Q Who did you see that first day?

A The first day I talked with an agent. And again later on he took me downtown. And the next day he came back and got me and took me back downtown.

Q You did not answer my question. A minute ago when I asked you how many times you talked to the F.B.I. you said many; is that right?

A Yes.

Q How many?

A I don't know.

Q How many times have you talked to Mr. Welch?

A Quite a few.

Q Today, were you in his office today, on the other side of the building?

A Yes.

Q What time did you get there?

A A little after ten, I think.

Q You talked to Mr. Welch this morning before the Court started this morning?

A Yes.

Q Did you talk to Mr. Welch during the luncheon recess?

A Yes.

Q How many other times have you talked to Mr. Welch?

A No other times.

Q Never met Mr. Welch before today?

A Yes.

Q How many other times have you talked to him?

A Quite a few.

Q More than five? More than five?

A Wait a minute. I would say about three.

Q When was the last time before today? Last Friday, on the 8th, didn't you talked to him and he showed you some photographs?

A Yes.

Q When was the last time before that?

A When I had to go to court.

Q When did you go to court? You mean to the grand jury?

A Yes.

Q And between the time you went to the grand jury and last Friday, February 8th, had you talked to him in-between?

A No.

Q Did you talk to Mr. Welch at any other time before you went to the grand jury?

A No. That is when I had met him and I had to go to the grand jury.

Q Did you talk to any other lawyers on this case, from Mr. Welch's office?

A Lawyers?

Q Yes. Did you talk to Mr. DiBianco?

A No.

Q Did you talk to Mr. Sullivan?

A Pardon?

Q Did you talk to Mr. Sullivan?

A Sullivan?

Q Does the name ring a bell?

A I don't know those guys.

Q Did you ever talk to an assistant district attorney from the Onondaga County District Attorney's office by the name of Lucia?

A I can't remember.

Q Lupia. I am sorry.

A I can't remember.

Q Do you recall there was a hearing held in the Public Safety Building in Syracuse, New York, on September 21 1973 and you received a subpoena to be there?

A No.

Q You ever recall receiving a subpoena to be at the Public Safety Building, at Syracuse, New York, to be there for a hearing?

A No.

Q Weren't you told by the Onondaga County District Attorney's office to be in court on September 23rd, for a hearing?

A I can't remember.

Q Did you ever talk to any lawyer, any of the assistant district attorneys of the Onondaga County District Attorney's staff?

A I don't remember of any.

Q By the way how many times have you talked to me?

A To who?

Q To me.

A This is the first time.

Q You did testify at the grand jury, did you not? I think you mentioned you testified; that Mr. Welch told you to go to the grand jury; is that correct?

A I went to the grand jury.

Q And at that time you were questioned before the Grand Jury by Mr. Welch; is that correct?

A Yes.

Q Now did you review your testimony before you testified today?

A Yes.

MR. MICHAELS: May I see it please?

(Mr. Welch hands documents to Mr. Michaels.)

THE COURT: We will take a short recess. That testimony is of some length. Mr. Michaels obviously needs a little time to study it. The jury may take a short recess.

(At this point the jury retired from the court room and a short recess was taken.)

(Grand Jury minutes of testimony of Alton Isaac marked as Exhibit 3504; Statement of Alton Isaacs marked as Exhibit 3503, and Statement of Alton Isaacs marked as Exhibit 3505.)

(The following took place in open court with the jury present.)

MR. MICHAELS: Sorry for the delay, Your Honor. When I was reading the grand jury minutes there was reference to other matters and I asked Mr. Welch for it and he provided it. Thank you very much for the recess.

THE COURT: Will counsel come up a moment.

(Discussion was held at the Bench between the Court and counsel, outside the hearing of the Court Reporter.)

BY MR. MICHAELS:

Q Mr. Isaac you testified on direct examination that Mr. Welch was questioning you and that the only one of those men that you had ever seen before was my client; that you had seen him playing basketball; is that correct?

A Yes; I said that?

Q That is what you just said here this afternoon, your sworn testimony under oath, that the only person you had ever seen before was my client, the one you pointed to several times; is that correct.

Q You also were asked under oath had you ever seen the other two on any other occasions and you said "no"; is that correct?

A You didn't ask me that.

Q I didn't ask you that but Mr. Welch asked you that. Didn't you tell Mr. Welch this afternoon that the only one you had ever seen before was Mr. Denson, my client?

A No.

Q What did you say? Would you like me to have the Court Reporter read back the testimony?

A I don't think it is necessary.

Q Isn't it true that I recall your testimony correctly? You did say this afternoon that the only one you had ever seen before was Mr. Denson; correct?

A Yes.

Q Did you read your grand jury testimony while you were sitting out in the U. S. Attorney's office? And I show you this document marked Exhibit 3504. Did you read that today?

A Did I?

Q Yes. Yes or no?

A Yes.

Q You read the whole thing?

A Yes.

Q Do you remember when you testified before the grand jury, and this is a transcript of your testimony, between the time that you testified before the grand jury when Mr. Welch questioned you and today, did you ever read that before?

A No. Today.

Q You didn't read that when you were in Mr. Welch's office last week?

A No.

Q How about Exhibit 3505, you ever read that before?

A Yes. Today.

Q Ever read that before, between the time you signed it

and today?

A No.

Q O.K. Your answer was no. Mr. Isaac you will have to speak up. Mr. Jordan is having a difficult time hearing, I can see. How about 3503, that is the F.B.I. report. Did you read that before today?

A Some of it.

Q What parts did you read? Did you read the part that had your own statement?

A This page.

Q Oh, you read the part of it that begins on Page 33, which is a typed copy of your statement. Did you read that?

A No.

Q You will have to speak up, Mr. Isaac.

A I don't remember.

Q Have you ever read that statement? That is the statement that you gave to the Federal Bureau of Investigation.

A Yes, I guess so.

Q And that was shortly after this incident in September, wasn't it?

A Yes.

Q This appears to be a photocopy. Probably there is another one someplace signed by you. And on Page 34

it indicates that you signed it. Do you recall signing that statement?

A I can't recall.

Q And then there is another statement that begins at Page 35 and ends on 37, which is another statement again, and your name is typed and something appears that you signed it. Do you remember signing that second statement for the F.B.I.?

A I read through so much.

MR. MICHAELS: Do you by any chance have the original that bears the signature, Gene? Can we stipulate the ones that appear in here with the typed signature apparently were signed by him at one time?

MR. WELCH: Yes.

BY MR. MICHAELS:

Q Now we just agreed that your testimony today under oath is that the only person you ever saw before the 12th of September 1973 was Robert Denson. You agree that that was your testimony; correct?

A Yes.

Q And you told me you read this grand jury testimony; correct? Your answer is "Yes"?

A Yes.

Q I show you -- would you read along with me and I ask you

if you recall the following question and the following answer -- excuse me -- I will rephrase that.

Do you recall the following question being asked you and the following answer being given by you when you testified under oath at the grand jury? Beginning at Page 18, Line 13:

"Q Had you ever seen these fellows before?

A Yes.

Q And where did you see them before?

A Across town."

Do you recall those two questions and those answers?

A When? Today?

Q No. When you testified at the grand jury about three and a half months ago.

A Yes.

Q You recall that. And am I reading it correctly?

A Yes.

Q And continuing the questioning at Line 17:

"Q And when you mean across town, is that over near the Thorne and Park area?"

It probably means Thornden Park.

"A No, the south side.

Q What were you doing with them in the

south side, or where did you see them before?

A Hanging out."

Do you recall those questions and those answers?

A "Hanging out"?

Q That is what it says.

A I wasn't hanging out.

Q Is that what you said?

A Yes.

Q You were under oath when you said it at the time?

A Yes.

Q Have I read it correctly to you?

A Yes.

Q Line 23:

"Q So you knew these fellows before this time, before you saw them in front of the bank that day, is that right?

A I didn't know them.

Q But you had seen them before?

A Yes.

Q And can you tell us about how many times you had seen them before?

A Oh, I don't know."

Do you recall those questions and those answers?

A Yes.

Q Did I read them correctly from your testimony?

A Yes, you did.

Q When you read this testimony this morning did you tell Mr. Welch there was any mistake?

A No.

Q And you stood by this when you read it?

A Meaning what? What do you mean?

Q You read it and you didn't offer to make any corrections; correct?

A Yes.

Q By the way, Mr. Isaac when you testified that you met Mr. Welch and the F.B.I, let's talk about Mr. Welch. When you talked with and met Mr. Welch at his office did he tell you thathe was going to give you any kind of immunity from prosecution if you testified?

MR. WELCH: Objection.

THE COURT: Sustained.

A Pardon?

Q He objected and it was sustained. Let me ask you another question. Mr. Isaac you testified on direct examination this afternoon that this one dude, and I believe you used the word when you referred to my client, this young dude came over and said "Hey, will you tap on the window if you see any police because we are going to take off this bank, and you answered correct?

THE COURT: Your question is improper in

that line.

Q That was the substance of what you said this afternoon?

A Can you repeat that?

Q Did you testify this afternoon and is it your testimony that my client came up to you on the 12th of September about three o'clock and he said, "Hey, Brother" and I may not be quoting you accurately, "Hey, Brother, if you see any cops will you tap on the window of this bank." And then you said to him "Why" and he said "We are going to take it off." Do you recall that that was the substance of your testimony?

A Yes.

Q And then after he told you that, as you say, you then said "yes" you would, didn't you?

A Yes.

Q Don't nod your head. Your answer is "yes"?

A Yes.

Q So you were a lookout?

MR. WELCH: Objection.

THE COURT: That is calling for a conclusion.

MR. MICHAELS: Pardon?

THE COURT: That calls for a conclusion.

BY MR. MICHAELS:

Q You did agree, did you not?

A (Nods head).

THE COURT: Now you may ask him whether he was promised immunity.

BY MR. MICHAELS:

Q Now in line with the questions I just asked you, in Mr. Welch's conversations with you about this, did he ever tell you that you wouldn't be prosecuted for your participation in this incident?

A I don't know what you mean.

Q Did he ever tell you that he wouldn't present a case against you to the grand jury?

A No.

Q Did he ever tell you that he wouldn't have you arrested?

A No.

Q Did he ever tell you that he thought you were the look-out?

A No.

Q Isn't that what you were?

A No.

Q But you did agree to tap if you saw any police?

A I did.

Q And then what did you do after you saw these men come out of the bank with bags, with something in them, you didn't go to the police, did you?

A No.

Q You didn't call the police?

A No.

Q You didn't volunteer testimony. You knew what they had done though, didn't you? Is that correct?

A Yes.

Q What you did was you got on the bus and went downtown?

A Yes, that is what I was doing from the jump.

Q You were going to do what you were going to do anyway. You went downtown.

A Yes.

Q After this time, September 12, 1973, at three p.m., did the F.B.I. ever come to your place of residence, to your home?

A No.

Q No?

A No.

Q Did the Syracuse Police Department ever come to your home?

A The day after.

Q Who was it from the Syracuse Police Department, do you know?

A I don't know his name.

Q Was he a detective or was he wearing a uniform?

A Detective.

Q Did he search your house?

A No.

Q Has anybody ever searched your house?

A No.

Q Let's get back to something else. Now you just recall I read to you portions of your grand jury testimony. Mr. Isaacs I now ask you will you agree with me that what you said under oath at the grand jury about knowing three of them and what you said under oath today about knowing only one of them, will you agree with me that you made two different statements under oath?

A No, I won't.

Q Would you like me to read you some more of your testimony at the grand jury?

A No.

Q Because you know, do you not, from reading this, that all through your testimony, page after page, you acknowledge you knew all three of them, didn't you?

A I didn't say I knew them.

Q That you had seen them?

A Yes.

Q Okay. What you are saying then, Mr. Isaac, is perhaps you are confused?

A Yes.

Q At which time were you confused? Today or when you were in front of the grand jury?

A Both times.

Q Maybe you were also confused when you gave information to the F.B.I. agents; is that correct? Maybe you were confused them?

A No.

Q Is that right?

A No.

Q You were not confused then; is that right?

A Yes.

Q What you said to the F.B.I,, the statements you gave them, that you are sure about?

A Yes.

Q Absolutely positive?

A Yes.

Q Okay. Good. I want you to look at your statement to the F.B.I., exhibit 3503, Page 33 and 34. I want you to read your statement for a minute, please. Read it to yourself please.

A (Reads.)

Q Have you completed reading that statement?

A Yes.

Q Now just so we keep the record straight, the statement listed at Page 33 and 34 of Exhibit 3503, is a statement apparently made by you on September 12, 1973, the date of this incident; is that correct?

A Yes.

Q Correct?

A Yes.

Q You will have to speak up. And when you made that statement you were being interviewed by F.B.I. people; correct?

A Yes.

Q I was not there, was I?

A No.

Q I was not around to cross examine you?

A No.

Q I wasn't around to cross examine you when you testified before the grand jury, was I?

A No.

Q You also made a statement to the Syracuse Police Department, didn't you? Which you signed. And I show you Exhibit 3505 and ask you if that is a copy of the statement that you made. Do you see your signature on the bottom? Is that your signature on the bottom?

A Yes.

Q Do you see -- would you read the statement again before I ask you any further questions.

A How much of this do you want me to read?

Q I would like to have you read the whole thing to make sure it is yours. Read it carefully.

A (Reads).

Q Okay. Have you read it, sir?

A Yes.

Q On the bottom of that statement that you got in front of you, you see right above your signature --- by the way, that statement was a sworn statement? That was done before anotary public; right? See where it says, "Subscribed and sworn to before me this 13th day of September 1973." That is an affidavit; correct?

A I suppose so.

Q The other statement that you signed before the F.B.I. you just signed it. This one you swore to; correct?

A Yes.

Q And in fact just before you signed it there was printed language on the sheet of paper which you read and which said "I have read this statement which consists of one page and the facts contained therein are true and correct to the best of my knowledge. I have also been told that swearing to a false statement can make me guilty of a crime."

Did you see that when you signed it?

A Did I see that when I signed it? No.

Q You read it before you signed it?

A I don't remember.

Q You mean you swore to something without reading it?

A Yes.

Q Well you knew -- you have been around so you knew if you made a sworn statement and the statement is not true, you knew that it is a crime to make a sworn statement that is false, don't you?

A Yes.

Q And having made that statement, and the statement to the F.B.I. and the grand jury, and then coming into court, are you telling me at no time did Mr. Welch ever tell you that he was giving you immunity to testify?

A I don't know what you mean.

Q That he wouldn't prosecute you; that he wouldn't charge you with any crimes?

A I didn't do anything.

Q Now did you say -- I don't recall your direct testimony but did you say that you saw the men, the three men, put their masks on?

A Pardon?

Q Did you say on direct examination that you saw the three men put their masks on before going into the bank?

A No.

Q Well did you or didn't you?

A No.

Q You didn't see them put them on?

A No.

Q Do you know whether they had masks on when they came out of the bank?

A I can't remember.

Q Do you remember this question in your grand jury testimony and this answer? Page 21, Line 10:

"Q Did you look into the bank at all while they were in there?

A No.

Q Well, when you saw them, do you remember what they were wearing?

A I forgot, now.

Q O.K. Do you remember whether or not any of them had any masks on?

A Stocking.

Q Stocking masks?

A Yes.

Q All three of them, or two, or one, or do you remember?

A All three of them.

Q You know that for sure, all three of them had them on?

A I don't ---"

It seems as if you didn't complete your answer. Did all three of them have masks on?

A I don't remember.

Q What?

A I don't remember.

Q Why did you tell the grand jury that all three of them had masks on?

A I don't know.

Q Is that your answer, you don't know why you told them that?

A Yes.

Q Did you realize when you were telling the grand jury, based on what you said to the grand jury, that that grand jury was going to bring in an indictment and ultimately bring these three men before the court?

A No.

Q Did you know when you were before the grand jury that you were to testify accurately before the grand jury?

A No.

Q Didn't someone come up to you and say that you were to tell the truth?

A Yes.

Q Didn't Mr. Welch, because I know Mr. Welch, didn't he come up to you and say "Come on, Alton, you got to tell the truth"; didn't he?

A I don't remember.

Q As a matter of fact between September 12th and today hasn't some attorney come to you and say, "Mr. Isaac" or he might have called you "Alton" didn't he tell you

that you got to tell the truth?

A Yes.

Q Who? Mr. Welch?

A Yes.

Q Today or before today?

A Before today.

Q Before you testified before the grand jury?

A About that time.

Q Okay. So about the time that you testified before the grand jury Mr. Welch said to you that you got to tell the truth; correct?

A Yes.

Q So what you told the grand jury under oath, as per instructions from Mr. Welch, you told them what was correct?

A Yes.

Q So what you are telling us today is incorrect because it is different?

A You know what I said.

MR. MICHAELS: Move to strike out the answer.

THE COURT: Strike it out.

MR. MICHAELS: Will you repeat the question.

(The Court Reporter repeated the question

as above recorded.)

THE WITNESS: No.

BY MR. MICHAELS:

Q Now, Mr. Isaac do you know -- does the name Craig Brant mean anything to you?

A Who?

Q Craig Brant. Do you know Craig Brant?

A No.

Q You don't know a Craig Brant. Mr. Isaac where did you first see photographs in connection with this case? In the Syracuse Police Department or the F.B.I.?

A F. B. I.

Q How many did the F.B.I. show you the first time they talked to you?

A Some books.

Q The F.B.I., did they show you books or show you individual pictures?

A Books.

Q And what did the Syracuse Police Department show you, books or individual pictures?

A Both.

Q Isn't it a fact when you went to the Syracuse Police Department you were shown just one photograph?

A One? I don't get your question.

Q Isn't it a fact when you went to the Syracuse Police

Department you were shown just one photograph?

A No.

Q Now do you mean this -- maybe I am confused. I just want to streighten this out. Isn't it a fact that when you went to the F.B.I. the first time they showed you one photograph?

A One?

Q Yes, one.

A No.

Q Let's see if you recall it now, after reading your testimony. Question at 34, Line 25:

"Q Do you remember whether you went to the F.B.I. before you want to the Syracuse Police Station?

A No, I was here first.

Q You were at the F.B.I. first?

A M-m j-u-m."

I tak. it that means "yes"?

A Yes.

Q (Continuing reading):

"Q O.K. You do remember which picture they showed you all by itself?

A That one."

And then in parenthesis is says you are indicating.

"Which one?

A That one.

Q That is No. 2. And do you know that fellow's name, in the No. 2 picture?

A I don't know. I can't tell.

Q Do you know his name? Did they ever tell you his name? Would that be Robert Lee Denson?

A Yes."

Did you testify at the grand jury that that is what they did?

A I didn't say that.

Q Didn't I read that correctly? Did I misquote this? Would you look and read it over yourself and tell me if I misquoted.

A No.

Q You were reading along as I read?

A Yes.

Q Did I read to you word for word as it is indicated there?

A Yes.

Q And word for word as it is printed is what you told me you read this morning and said it was okay, and I read off what it says "they showed me one photograph and only one"; is that right?

A I don't know.

Q Which do you want us to believe, Mr. Isaac. Tell the jury, which you want us to believe?

Let the record show there is no answer to the question.

THE COURT: Do you want an answer?

MR. MICHAELS: No. I don't care.

THE COURT: We will recess now until tomorrow morning at ten thirty. Don't talk about the case; don't let anybody talk to you about it. Good night.

(Whereupon at 3.59 p.m. o'clock the jury retired.)

THE COURT: All right. We are in recess.

THE CLERK: Court stands in recess until ten thirty tomorrow.

(Whereupon at this point a recess was taken to February 14th, 1974 at ten thirty o'clock a.m.)

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Proceedings, dated Feb. 14, 1974. 99.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

- -x

UNITED STATES OF AMERICA,

- against - : 73-Cr-194

ROBERT LEE DENSON, Jr.,

Defendant.

- -x

The trial in the above-entitled matter was continued, pursuant to adjournment, at the United States District Court held in and for the Northern District of New York, at Utica, N. Y., on February 14, 1974, at ten thirty o'clock a.m. before HON. LLOYD F. MacMAHON, United States District Judge sitting by designation, and a Jury.

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A P P E A R A N C E S :

HON. JAMES M. SULLIVAN, Jr., United States Attorney for the Northern District of New York, Federal Building, Syracuse, New York, By: EUGENE WELCH, ESQ., Assistant United States Attorney, Of Counsel, appearing in behalf of the United States of America;

- and -

LEE S. MICHAELS, ESQ., Attorney and Counsellor at Law, Metcalf Plaza, Auburn, New York, Assigned, appearing in behalf of the Defendant.

Defendant in person.

- - - - -

THE CLERK: Bring the jury in please.

(At this point the Jury was brought into the courtroom.)

THE COURT: Good morning.

THE JURY: Good morning.

A L T O N I S A A C

resuming the stand, having previously been sworn, testified further as follows:

CROSS EXAMINATION (Continuing)

BY MR. MICHAELS:

Q Good morning, Mr. Isaac.

A Good morning.

Q I believe yesterday I was asking you questions about your testimony at the grand jury, and you recall there was some confusion about how many photographs you had been shown. Do you recall that?

A Yes.

Q And Mr. Welch called it to my attention after you testified that perhaps your testimony before the grand jury on this particular subject was helped at a later time. Let's get the record straight at this juncture about what I asked you. There was some confusion about whether you saw one photograph only. Apparently you did see more than one photograph?

A Yes.

Q So the confusion that existed in your testimony yesterday we can forget about that now. Your testimony is that you did see several photographs?

A Yes.

Q Do you recall yesterday that you told me that you had read your grand jury testimony yesterday before you testified?

A Yes.

Q And you agree to that; is that correct?

A Yes.

Q You also told me that you had read the F.B.I. report before you testified?

A Yes.

Q I don't know whether you told me whether you read the statement that you gave to the Syracuse Police, but you did read it in court yesterday; didn't you?

A Yes.

Q Now, Mr. Isaac what I want to know is this. Today is February 14th. The date of this incident was alleged to be September 12, 1973; is that right?

A Yes.

Q About five months ago; correct?

A Yes.

Q Would it be a fair statement to say that in the five months that have elapsed there are certain things that you have forgotten and that is why you had to re-read this testimony and re-read these reports, to refresh your recollection on certain events?

A Yes.

Q Would it also be a fair statement to say that your recollection of what you observed and what you saw was best, was most accurate when you were first interviewed?

A I don't know what you mean.

Q In other words on September 12th you were first interviewed by the F.B.I.?

A Yes.

Q And then later by the police. Would it be a fair state- to say that your recollection of what you saw on Lexington and Cherry Street that day, what you heard, what you observed, was better then than it is now?

A Yes.

Q It was clearer then?

A Yes.

Q It was more accurate then?

A Yes.

Q By the way I think you indicated in your first statement to the F.B.I. that when this man came up to you and talked to you outside the bank, I think you used the word in the statement, that you were standing by a railing?

A Sitting.

Q Well didn't you say standing? Let me refresh your recollection on that subject to see if we can get it clear. Didn't you say in the second paragraph of your statement, located on Page 33 of the F.B.I. report, didn't you say as follows:

"About three o'clock on this day I stood at the corner of Lexington and Cherry Streets in Syracuse, waiting for a bus. I was in front of the First Trust & Deposit. Nearby on Lexington stood three negro males. They

approached the front of the bank. The men were described as follows."

Now did you say sitting?

A Well whoever wrote that didn't know what they were writing.

Q But you did sign it though, didn't you?

A Yes.

Q In fact you were quite confused that day because you signed one statement for the F.B.I. that said "stood" didn't you?

A Yes.

Q And you signed another statement at the Syracuse Police Department just the next day and you said "sitting"; is that right?

A Yes.

Q Now when you --- which was it, were you sitting or standing?

A Sitting.

Q So when you signed that statement in which you said you were standing, or stood, that is incorrect?

A Yes.

Q And when that statement was read to you word for word by Mr. Welch before the grand jury, at the end of that statement when he said to you "Is that accurate" your words were "yes"?

A Yes.

Q You didn't stop him and say, "Mr. Welch, you made a mistake. I was sitting, not standing"?

A Yes.

Q So you did in fact tell the grand jury something under oath that you were not sure of; is that right?

A Yes.

Q When these three males came to you, I believe that you now acknowledge that regardless of what you said under oath before the grand jury that in fact you were sitting on the rail; is that right?

A Yes.

MR. MICHAELS: May I see Exhibit 1, please?

(Clerk hands Exhibit 1 to Mr. Michaels.)

Q Is this -- showing you Exhibit 1, -- is that in evidence? I think so. Exhibit 1, does that railing show in that photograph? Is that the railing on the left side?

A Yes.

Q And that railing appears to be probably about three feet, three and a half feet off the ground where the bar goes across it is. So that you are sitting there. You are a man of medium stature. How tall are you?

A Five six.

Q So a man of your stature, of five six, it wouldn't

make any difference in the height of your head whether you were sitting with your buttocks on that bar or whether you were standing up. Being a short person your head would be about the same height anyway?

A Yes.

Q And these three black or negro males came up to you while you were sitting on that bar; is that correct?

A Yes.

Q Then you described them in your statement to the F.B.I., and you described negro male No. 1. I believe you recall negro male No. 1 was the man you ultimately picked out as my client?

A Yes.

Q Because "Negro Male No. 1" you said came up and started to talk to you?

A Yes.

Q And you described his height as six eight or six seven inches?

A Yes.

Q Do you know how tall six seven or six eight inches is?

A No.

Q Can you divide sixty-seven or sixty-eight inches by twelve?

A No.

Q You know there are twelve inches in a foot?

A Yes.

Q You know that sixty inches is five feet?

A Yes.

Q In other words you are about sixty-seven inches tall?

A Yes.

Q And this was a statement that you made in the most accurate point of time that you can recall making. You said he was sixty-seven or sixty-eight inches; is that correct?

A Yes.

Q And then the next day you went down to the Syracuse Police Department and you referred to the person you ultimately picked out as my client. Again in that statement you referred to him as the "first dude" didn't you?

A Yes.

Q You said the first dude was -- is this correct, you said this under oath?

A I was.

Q You said that the first dude was about five seven to five eight tall, and weighed about one hundred fifty or one hundred sixty pounds. Is that what you said?

A Yes.

Q So on the night you were first interviewed you said he was five foot eight or five foot seven?

A Yes.

Q And on the next day you said five foot seven or five foot eight?

A Yes.

Q When these three males came up to speak to you you indicated one of the other males was five foot seven?

A Yes.

Q And the other male who didn't talk to you, you indicated was six feet tall?

A Yes.

Q So in other words one of them was tall?

A Yes.

Q And the other two were short, like you; is that correct?

A Yes.

Q One was a big tall fellow and the other two were short; that is correct? Am I right? That is what your statement indicates?

A Yes.

Q Now you did tell me you were five foot seven?

A Yes.

Q Five foot six.

MR. MICHAELS: Would you mind stepping off the witness chair. And Mr. Denson, will you stand up and take your shoes off and stand in your stocking feet.

With the Court's permission can I ask the witness to stand down from the chair?

THE COURT: Surely.

BY MR. MICHAELS:

Q Come on over here, Mr. Isaacs. Why don't you stand next to Mr. Denson. How tall do you think he is now? Take a look at him. Do you think he is taller than five foot seven?

A Yes.

Q Do you think he is taller than six feet?

A Yes.

Q You have to look up to him a good bit?

A Yes.

Q You don't meet him at the same eye level?

A No.

Q All right. Thank you very much.

A (resumes witness chair.)

Q Now, Mr. Isaac did you say yesterday that the man that you spoke to, who you pointed out in the courtroom, did you say he was wearing a moustache when you were talking to him?

A No.

Q Well he wasn't?

A No.

Q The photograph that you picked out though had a man with

a moustache?

A No, not that I can remember.

Q Let's take a look and see. Isn't this the photograph that you picked out when you looked at photographs before the grand jury?

A Yes.

Q The man has got a moustache, doesn't he?

A Yes.

Q He has got a moustache now?

A Yes.

Q Are you really sure you saw Mr. Denson?

MR. WELCH: Objection.

THE COURT: I think that is argumentative.

Q I show you anotherphotograph you looked at before the grand jury, a photograph which was then marked as Number 3. Did you look at that photograph too?

A Did I?

Q Yes.

A Yes.

Q Do you know how tall the man in that photograph is?

A No.

Q Will you look at that and tell me if that is not the same man that you picked out in Photograph No. 2?

A No.

Q It isn't?

A No.

Q I think we can wrap this up in a couple of questions, Mr. Isaac. I think you will acknowledge, will you not, that you have admitted now in Court that you have testified to one fact under oath before the grand jury, and that was the fact that you had seen all three of these black males earlier; is that right?

A Yes.

Q And that you not only testified before the grand jury but you testified over and over about that; correct?

A Yes.

Q And you now testified, and you now testify in Court that you only saw one, correct, before hand? That is your testimony now?

A No.

Q Which is your testimony? I thought you testified yesterday that you had only seen one?

A I didn't say that.

Q All right. You have also testified that you made a statement to the Syracuse Police Department in which you described the man who talked to you as five foot seven or five foot eight, one hundred fifty, one hundred sixty pounts. By the way I forgot to ask you, how much do you weigh?

A One hundred forty.

Q And you also testified when you made a statement to the F.B.I. which you confirmed in the grand jury, which at the time when your recollection of this was most accurate, that this man was five foot seven to five foot eight; right?

A Yes.

Q And in fact the other black males that approached you on the street, one was tall and the other two were short?

A Yes.

Q And the tall one was not my client. The tall one was someone else?

A Yes.

Q And he is, -- you just went over and stood next to him and he was four or five inches higher than you?

A Yes.

Q Which makes him six foot two?

A Yes.

Q Can you give me any reason at all why I should believe this ---

MR. WELCH: Objection.

THE COURT: Yes. Put your question.

MR. MICHAELS: I have no further questions.

REDIRECT EXAMINATION

BY MR. WELCH:

Q Now, Mr. Isaac, do you recall yesterday afternoon when Mr. Michaels cross examined you he read to you some questions and answers from your grand jury testimony?

A Yes.

Q Specifically do you recall him reading these questions and answer to you on Page 21:

"Q Did you look into the bank at all while they were in there?

A No.

Q Well, when you saw them, do you remember what they were wearing?

A I forgot, now.

Q O.K. Do you remember whether or not any of them had any masks on?

A Stocking.

Q Stocking masks?

A Yes.

Q All three of them, or two, or one, or do you remember?

All three of them."

Do you remember going over those questions with Mr. Michaels yesterday?

A Yes.

Q Now that was on Page 21 of the transcript. You remember

being asked further questions in that same grand jury later on about those masks?

A Yes.

Q Do you remember being asked these questions and giving these answers:

"Q O.K. Now, before they went into the bank -- I have a confusion in my mind -- before they went into the bank, were they wearing these marks, or just afterwards, or both times?

A When they got ready to go in?

Q When they got ready to go in.

A Yes.

Q And did you see them put the masks on? I didn't hear you.

A Yes.

Q And so that you saw them before they put the masks on, is that right?

A Yes. What do you mean?

Q Well, I don't know and that is what I am trying to find out. You said that they came up to talk with you while you were waiting for the bus?

A Yes.

Q And when they first came up at that

time did they have masks on that day?

A No."

Do you remember being asked those questions and giving those answers?

A Yes.

Q Mr. Isaac you remember testifying yesterday that the man who you testified is Robert Lee Denson came up this close (indicating) -- three feet away from you and asked you to knock on the window?

A Yes.

Q When Mr. Denson was three feet away from you was he wearing a mask?

A No.

Q Now Mr. Isaac did you knock on the window?

A No.

Q Did you talk to any of those three men at any time after the bank robbery that day?

A No.

Q Did you ever get any money from any of those three men?

A No.

Q Did they ever offer you any money?

A No.

Q Mr. Isaac at this time is there any doubt in your mind that that man there (indicating defendant) was the man who came up and asked you to knock on the window

if you saw any cops coming when they were going to knock off the bank?

MR. MICHAELS: Objection.

THE COURT: Overruled.

Q Tell the ladies and gentlemen of the jury if there is any doubt in your mind that that is that man?

A No doubt.

MR. WELCH: I don't have any more questions.

RECROSS EXAMINATION

BY MR. MICHAELS:

Q To go back to this, and you read your testimony, what it all comes down to, when you were testifying before the grand jury you said one thing, what Mr. Welch wanted you to.

MR. WELCH: Objection.

THE COURT: Sustained.

Q You did say two different things before the grand jury did you not?

THE COURT: Sustained.

Q Were you confused when you testified before the grand jury?

MR. WELCH: Objection, Your Honor.

THE COURT: Overruled.

Q Were you confused?

A A little.

Discussion concerning mechanics of ordering immunized testimony in Jury's presence. 117

MR. MICHAELS: Thank you.

THE COURT: You are excused.

(Witness excused.)

MR. WELCH: At this time, the government calls Kelvin Broadwater to the stand.

THE COURT: Are these the witnesses that we discussed earlier?

MR. WELCH: Yes, Your Honor.

THE COURT: All right. The jury can take a short recess.

(At this point of the proceedings the jury retired from the courtroom.)

THE COURT: Mr. Michaels have you given some thought to the problem we discussed where this witness should possibly invoke the fifth amendment in the presence of the jury, or do you wish the Court to take a voir dire in the absence of the jury.

MR. MICHAELS: Yes, I have given it some thought.

THE COURT: You told me that you would advise me before these witnesses were called. I assume you know who they are.

MR. MICHAELS: I have given it some thought. My position yesterday was ----

THE COURT: I know what your position was.

MR. MICHAELS: I don't feel that my position is changed.

THE COURT: Are these two witnesses the other defendants here?

MR. WELCH: Yes.

THE COURT: Have they pleaded already?

MR. WELCH: Yes. On January 28th, before Judge Port they entered pleas.

This is Mr. Gebriel Goldsmith, who is associated with Mr. Abelson, who is engaged in trial elsewhere.

Mr. William McKeon represents Raymond Jones. Mr. McKeon is on trial somewhere and he is on his way.

THE COURT: You wish to say something?

MR. GOLDSMITH: Nothing other than I appear.

MR. WELCH: He has consulted with his client and we have advised his client of the nature of the proceedings and what we would ask and we don't know what to anticipate.

THE COURT: All right. We will proceed.

MR. GOLDSMITH: This is true.

THE COURT: All right. Recall the jury.

You say they have pleaded guilty. Have they been sentenced?

MR. WELCH: Not yet.

THE COURT: Both went before the same Judge?

MR. WELCH: Yes.

THE COURT: Which judge?

MR. WELCH: Judge Edmund Port.

MR. MICHAELS: Before the jury comes in may I make an entry on the record?

THE COURT: They are on the way in. I took a recess to give you this opportunity.

MR. MICHAELS: I can put it on afterwards.

THE COURT: No, if it is something that we need now, do it.

MR. MICHAELS: I want the record to show that the procedure you asked me about, this was after consultation with my client, and this is the way he preferred to do it.

THE COURT: They are going to assert the Fifth Amendment and they will be told that they will be prosecuted if they do. And he wants that before the Jury?

MR. MICHAELS: That's right.

THE COURT: And also they are subject to

civil contempt, incidentally. Do you understand that?

MR. MICHAELS: I do.

(At this point the jury returned to the courtroom.)

THE COURT: Will counsel come to the Bench please.

(The following discussion took place at the Bench outside the hearing of the Jury.)

THE COURT: Do you have any other witnesses that the government is going to offer, other than those two?

MR. WELCH: Yes, Your Honor.

THE COURT: How many more witnesses. I am trying to estimate the duration of this trial.

MR. WELCH: I think five more, Your Honor. But they are very short. The difficulty is one witness was supposed to be here at nine and I don't know if he has arrived. Two of the witnesses who were supposed to be in here at nine are in Detroit.

THE COURT: So the trial will continue into next week?

MR. WELCH: I think so.

THE COURT: All right.

(The following took place in open court before the jury.)

MR. WELCH: Government calls Kelvin Broadwater, Your Honor.

K E L V I N B R O A D W A T E R

called as a witness in behalf of the Government being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. WELCH:

Q Mr. Broadwater where do you live, or where did you live in September 1973?

A 1905 South State Street.

Q Is that in the City of Syracuse, New York?

A Yes.

Q Do you know where the First Trust & Deposit East Side Branch bank is located at Cherry and Lexington Avenue, at Syracuse, New York?

A Yes sir.

Q Directing your attention to September 12, 1973, at three p.m. or approximately thereabouts, were you in that branch bank at Cherry and Lexington?

A Yes sir.

Q What were you doing in that branch bank? Tell us what you did and what you saw.

A I don't understand. What you mean by this here?

Q Did you tell us just now that you were in that branch bank at about three o'clock on September 12, 1973? Is that correct?

A Yes, sir.

Q What were you doing in that branch bank at that time?

A I taken part in a robbery in that bank at that time.

Q Who else took part in that robbery at that time? Do you know Robert Lee Denson?

A Yes, I know him.

Q Did he take part in that robbery with you at that time?

A I take the Fifth Amendment on that.

THE COURT: The Court instructs you that you have been granted immunity by the Attorney General and that the government cannot prosecute you or use your testimony to prosecute you for a crime -- use your testimony on this trial to prosecute you for anything that you say, except of course if it is a deliberate lie to the Court and the government can prosecute you for perjury. And if you refuse to testify the Court has the power to, and will hold you in contempt

both civilly, and incidentally -- not civil contempt -- and you will also be subject to prosecution for criminal contempt. So I direct you to answer the question.

THE WITNESS: No.

BY MR. WELCH:

Q The answer is "no"?

A No.

Q Robert Lee Denson did not participate in the robbery?

A No.

Q Who else did participate in the robbery?

A Jones.

Q Raymond Jones. Anyone else?

A There was the get-away driver that was used to drive also.

Q How many people actually went inside the bank?

A Three.

Q You went inside the bank; is that correct?

A Yes.

Q Did Raymond Jones go inside the bank?

A Yes.

Q Who was the third person to go inside the bank?

A I don't know his full name because when I was going to Jones -- Jones brought this guy to me. I don't know him.

Q Did Jones introduce him to you with any name?

A Jones gave me a name but I don't remember -- you know -- it was not his right name. I don't know what was his name.

Q Did he have a nickname? What did you call him?

A That was the first time I ever seen him.

THE COURT: What did you call him.

THE WITNESS: It was some type of religious name.

BY MR. WELCH:

Q When you went in to rob the bank what were you wearing?

A I was wearing shades.

Q Shades? You mean sunglasses?

A Right.

Q You have anything on your head besides sunglasses?

A I had a brown knitted cap.

Q Did you have anything covering your face, besides the shades?

A No.

Q When you went in the bank were you armed?

A Yes, sir.

Q With what?

A I had a sawed-off double barrelled shotgun.

Q Did you point it at anyone in the bank?

A Yes, sir, I believe so.

Q Did you say anything to anybody in the bank while you were pointing that gun at them?

A I said, "This is a stickup. Everybody put their hands up and get against the wall."

Q How about the other fellows, what were they wearing and what did they do? Let's start with Raymond Jones. What was he wearing?

A I believe he had a brown cap and a stocking mask.

Q What do you mean when you say a "stocking mask"?

A A brown stocking that a woman would wear.

Q A Nylon stocking?

A Yes.

Q And he had that where? Over his face?

A Right.

Q How about the third man, the man that you say you don't recall?

A He had the same thing.

Q Would you describe what you mean by "the same thing"? He have a hat on?

A Right.

Q What kind of a hat?

A It was like a blue jockey cap.

Q Will you tell the ladies and gentlemen of the jury what you mean by a "blue jockey cap"?

A It is like a cap, you know, with a brim on it.

Q It has a brim on the front?

A Yes.

Q Do you know what color it was?

A No.

Q Do you know whether it was light or dark?

A No.

Q Was this third fellow or Jones carrying any weapon?

A No, sir.

Q Tell us exactly what each of the three of you did? What did you do when you walked into the bank?

A Well I was in front by Jones, and he asked me did I want to make some money with him. He had this other person with him. I was home at the time and they had come to get me and asked me did I want to make some big money.

Q The third fellow was with him when he came to get you?

A Yes.

Q All right. Continue please.

A And he said "We will see if we can get a car." He had a car located and the car was being used, and he had a shotgun and he said that was being used. And he had stockings and rubber gloves and those were being used.

Q This is Raymond Jones talking?

A Yes. I asked him where the bank would be located. He told me on Cherry Street and Lexington Av. We walked a couple of blocks and pick up the car. We went on to

the bank and we lay in front of the bank about a half hour or so. We figure out whether it was the right time or not.

Q Well what would be the right time? Wat time were you waiting for?

A Streets was busy. If anybody was in the street; how many people was in the bank; he already knew how many people was in the bank.

Q Who was this that is talking?

A Jones. He had knew how many people was in the bank and how they were going to do it.

Q That morning when you first met Jones and this third fellow, at any time that morning did you see Bobby Lee Denson, Jr.?

A No.

Q At the time that you were at the bank was Bobby Lee Denson Jr. there, in the neighborhood?

A No.

Q After the bank robbery was Bobby Lee Denson around at any time after the bank robbery?

A No.

Q Did you see Bobby Lee Denson, Jr. on September 12th at all?

A No.

Q You are testifying now that at no time on September 12,

1973 did you see Bobby Lee Denson?

A No.

Q "No," that is not your testimony? I just want to get it clear. On September 12, 1973, were you at all with Bobby Lee Denson at any time that day?

A No.

THE COURT: Do you know Bobby Denson?

THE WITNESS: This is him, right here. (Indicating defendant.)

THE COURT: How long have you known him?

THE WITNESS: Probably about six years or so.

THE COURT: Is he a friend of your's?

THE WITNESS: Not a good friend. But I have seen him before. Played basketball with him before in different areas.

BY MR. WELCH:

Q Which one of those different areas would Bobby Denson have been playing basketball in?

A Well, you know, it is a number of years or so. Like North Park; Wilson Park; Thornden Park.

Q Thornden Park? Is that what you said? I didn't hear you.

A This is over a number of years I have seen him.

Q And was Thornden Park one of the places that you have

seen him play basketball?

A Probably was so.

Q Now after this bank robbery where did you go?

A I went home.

Q Where is home?

A 1906 South State Street.

Q How about the other two fellows?

A Well they got in the car and left. And told me they would see me later on, you know, until they got rid of the car.

Q And did they see you later on?

A No.

Q What did you do after you got home?

A Well I left -- I had changed clothes and I left -- and the guys had not come up and picked me up or nothing and I walked around, I went to this bar and I stayed inside the bar well, until about eight thirty or so. Then I left -- I got a ride and I went back home.

Q Where is this bar that you went to?

A It is located on Cortland Avenue.

Q Do you know the name of it?

A 312 Club.

Q 312 Club on Cortland Avenue?

A Yes.

Q Did you see anybody there that you know?

A I don't know their full names. Nicknames and specific names.

Q About what time of the day was that?

A Approximately eight o'clock.

Q Do you recall, did you go right to this bar from your house?

A No, I walked in through the area down Midland Ave., West Castle Street, you know, and went around to Bellevue Avenue because ---

Q Go ahead and finish your answer.

A --- because I figured I probably see them in the area somewhere.

Q See who?

A Jones and this other guy.

Q Do you recall the other guy's name?

A No. It was just some religious name.

Q Then you went to this 312 Club on Cortland Avenue, you said?

A Yes.

Q Who did you see there?

A There was a couple of people I know there. A girl named Mabel; a guy named "Mitch" and a guy named Sherman.

Q Do you remember any of their last names?

A One guy name Sherman Snyders and the girl's name was

Mabel Tamsel(?). I don't know Mitch's last name.

Q Would you see Sherman Snyders and Mabel at the 312 Club?

A Right.

Q And you saw them at about eight o'clock that night?

A Yes.

Q Then you said something about catching a ride. With whom did you catch a ride?

A I had money in my pocket -- a few dollars and I asked Sherman did he know possibly somebody could give me a ride home. He asked this guy -- I don't know the name -- but I paid him a dollar. He took me home to 1906 South State Street. The time I got in the car the Syracuse Police had pulled over and has the streets like blocked up and said I was under arrest.

Q When you were driven to your home at 1906 who else was in the car?

A These were older people. I don't really know their names. Guys about 38.

Q So do you remember what kind of acar it was?

A It was a blue -- no, it was a Green Ford or something, or blue or something.

Q But you don't recall who the people were who gave you the lift?

A No. I had seen him before. Seen him about three or four times, but I never did know the names or anything.

MR. WELCH: Would Your Honor indulge me for one moment please?

THE COURT: Who carried out the money from the bank?

THE WITNESS: Jones and this other guy.

THE COURT: How much?

THE WITNESS: I don't know. I never really ever did see -- I seen the money but I could not tell you how much it was.

THE COURT: What did you do with the money?

THE WITNESS: I don't know, because they shot from the bank directly to my house and I got out of the car.

THE COURT: Did you divide the money?

THE WITNESS: No.

THE COURT: Did you get any of it?

THE WITNESS: No, sir.

THE COURT: Who got it?

THE WITNESS: Pardon me?

THE COURT: Who got the money?

THE WITNESS: I don't know who have the money.

THE COURT: What about the fellow that you didn't know, did he take any of the money?

THE WITNESS: No.

THE COURT: He didn't take any of the money?

THE WITNESS: No. I don't know.

THE COURT: What about the other fellow, Jones, did he have the money?

THE WITNESS: I reckon they do have the money.

THE COURT: Jones has the money?

THE WITNESS: I believe so. They had the money.

THE COURT: You ever go to him and ask for your share?

THE WITNESS: No.

BY MR. WELCH:

Q So have you told us all the places that you went from the time you went from the bank robbery to the time that the police picked you up? You tell us --- you told us about the bar and then back home again. Any other places?

A I didn't hear you.

Q Have you told us all the places to which you went after the bank robbery?

A Right.

Q Were you ever on Midland Avenue that day after the bank robbery?

A Right.

Q You were. What were you doing on Midland Avenue?

A I believe I was, you know, going through the area, you know. Walking through the area.

Q Was anybody else with you when you walked through that area?

A No.

Q How about Bobby Lee Denson, was he with you then?

A No.

Q He was not with you then?

A No.

Q What did you do while you were on Midland Avenue?

A I was looking for the two guys at that time.

Q Did you find them there?

A No.

Q Did you get into a car on Midland Avenue?

A Pardon me?

Q Did you get into a car on Midland Avenue?

A No.

Q Did you talk to anyone while you were on Midland Avenue?

A I don't believe I did.

Q Mr. Broadwater when you were arrested were there any agents of the F.B.I. there?

A I am not sure, because I don't know who they was, you know. There was about five or six, maybe. Maybe ten

of them.

Q Did they tell you what you were arrested for?

A Yes. I guess the young guy who was working for the Police Department, he put the handcuffs to me and put me in the car.

Q They tell you what you were arrested for?

A Yes.

Q What did they tell you?

A I said at the time I didn't know nothing about this here.

Q You denied being involved in it?

A Right.

Q You give any statements to anyone?

A No.

Q At any time did you ever tell anybody the name of the third guy?

A No, because I never knew the third guy.

Q Now the Judge just told you that you are cloaked with immunity for your testimony today. Is that correct? Did you understand that.

Q Yes, I understood what he was saying.

Q Were you ever charged with this after you were arrested?

A Pardon me?

Q Were you ever indicted for this bank robbery?

A The bank robbery?

Q Yes.

A From what my lawyer said, I was.

Q Did you ever appear in federal court in regards to the bank robbery?

A Right.

Q What is the status of that case now?

A I hear you but I don't understand what you are saying.

THE COURT: You can lead him.

Q Mr. Broadwater, didn't you appear in this court about a week ago and enter a guilty plea in this case?

A Right.

Q So the immunity is only as to using this testimony against you at a later date, but you are not completely immunized for the crime. You were prosecuted for the crime?

A Right.

Q Have you been sentenced yet?

A No, sir.

Q Since you have been testifying, do you recall ever seeing Robert Lee Denson on September 12, 1973, at any time on that day?

A Not that I recall, on that day.

MR. WELCH: I have no further questions. Thank you, Your Honor.

MR. MICHAELS: No questions.

THE COURT: You are excused.

(Witness excused.)

MR. WELCH: If Your Honor please, may we approach the Bench?

THE COURT: Sure.

(The following discussion took place at the Bench between the Court and Counsel outside the hearing of the Jury.)

MR. WELCH: If Your Honor please, the next witness we had planned to call is Raymond Jones. It is obvious that I may find myself delayed again by the testimony of Raymond Jones. But if I do call him we will need his attorney here. I wonder if we may break for lunch now.

THE COURT: Can't you call another witness and we will take Jones this afternoon? If you can ---

MR. WELCH: Let me see if the other witness is here.

THE COURT: We can recess now but if you have another witness let's use the time now.

MR. MICHAELS: I object to the word "delayed." I never talked to this man.

THE COURT: That is a pretty far out term. He obviously expected him to identify your client.

MR. WELCH: And I was advised accordingly

by his attorney.

(The following proceedings took place before the jury.)

MR. WELCH: May we approach the Bench?

THE COURT: What is it?

MR. MICHAELS: We had an agreement before we started that no witness to be called would be in the courtroom until he testified. This guy (indicating) walked in here and I have never seen him and I don't know who he is.

THE COURT: Is he a witness?

MR. WELCH: May I proffer his testimony and see what counsel's position is. His testimony is simply that at approximately five or six o'clock on the day of the bank robbery Robert Lee Denson came to his service station to purchase an automobile for two thousand dollars cash.

MR. MICHAELS: Of course it is not proof of where the money came from.

THE COURT: But it is probative.

MR. WELCH: He is not going to testify about anything concerning Broadwater or Jones.

MR. MICHAELS: I don't object to the

calling of the witness. I realize this was not done in bad faith.

THE COURT: Not only that there has been no testimony on that up to this point.

MR. MICHAELS: Okay.

MR. WELCH: Thank you.

(The following took place in open court with the jury present.)

MR. WELCH: United States called Mr. Douglas S. Bullock to the stand.

D O U G L A S S. B U L L O C K

called as a witness in behalf of the Government being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. WELCH:

Q Mr. Bullock keeping your voice up good and loud so all these people can hear you, will you tell us how old you are?

A 22.

Q 22. And how are you employed?

A I work for my father in a service station.

Q Where is that service station located?

A 1325 ~~xkxF~~ East Fayette Street.

Q 1325?

THE COURT: 1325 what?

THE WITNESS: East Fayette Street.

THE COURT: Syracuse?

THE WITNESS: Yes.

BY MR. WELCH:

Q Were you so employed on September 12, 1973?

A Yes, I was.

Q On September 12, 1973, did you know Robert Lee Denson, Jr.?

A Yes.

Q Did you see him that day?

A Yes sir.

Q Will you tell the ladies and gentlemen of the jury where you saw him and what you saw him do?

A I saw him that day at the service station.

Q At about what time?

A I don't remember exactly the time.

Q Was it morning or afternoon or evening?

A It was in the afternoon.

Q Early afternoon or late afternoon?

A Late afternoon.

THE COURT: Wat it still daylight?

THE WITNESS: Yes sir, it was still daylight.

Q But late afternoon?

A I don't know exactly the time but it was later afternoon.

Q Mr. Bullock do you remember being interviewed by an agent of the F.B.I.?

A Yes.

Q If I show you a piece of paper regarding that interview would it help you refresh your recollection as to what time it was?

A Yes it would.

MR. WELCH: May I approach the witness, Your Honor.

THE COURT: Yes.

BY MR. WELCH:

Q Mr. Bullock I am showing you two pieces of paper, and in the left hand corner there is an indication of "Interview 9/14/73." Directing your attention to the bottom paragraph could you just read that to yourself.

A (Reading) "Interview ---

Q To yourself, please.

A (Witness peruses documents.)

Q Mr. Bullock now that you have had an opportunity to read that paragraph of that document, did that refresh your recollection of the question I asked you?

A Yes.

Q About what time of the day was it that you saw Mr. Denson at the service station?

A It was around like say six o'clock.

Q What did you and he do? You have any conversation with him at that time?

A Yes, he came in and asked me was I still selling my car.

Q I didn't hear you.

A He came in and asked was I still selling my car.

Q Continue with the conversation.

A And I told him "yes". And he asked me was I still asking the same price, and I said "yes".

Q What was that price?

A Two thousand dollars.

THE COURT: Had you talked to him about selling your car before?

THE WITNESS: He had asked about it before, yes.

THE COURT: When?

THE WITNESS: Maybe two or three weeks before.

THE COURT: He didn't buy it at that time?

THE WITNESS: No.

THE COURT: Did he say why?

THE WITNESS: No, he didn't say why.

BY MR. WELCH:

Q All right. On that date, September 12th, about five or six o'clock in the afternoon did he buy the car that day?

A Yes.

Q How did he pay for the car?

A Cash.

Q And how much did he pay for the car?

A Two thousand dollars.

Q Two thousand dollars in cash?

A Yes.

THE COURT: Bills or currency?

THE WITNESS: Money.

THE COURT: Do you remember what the demominations of the bills were?

THE WITNESS: No. I think they were tens and twenties.

BY MR. WELCH:

Q When he arrived at the station -- did you see him arrive at the station?

A Well when I seen him he was walking outside the yard, approaching me. He was coming up Fayette Street, near the pumps.

Q Was anyone with him?

A No one.

MR. WELCH: If Your Honor please, I have no further questions of this witness.

THE COURT: Had you known Mr. Denson for some time?

THE WITNESS: Yes I had, Your Honor, known him before.

THE COURT: How long?

THE WITNESS: I knew him maybe three or four years.

THE COURT: All right.

(Document marked as Exhibit 3506, being statement of the witness to the F.B.I.)

THE COURT: Where did he take the money from?

THE WITNESS: From his pocket.

THE COURT: Did he have any other money?

THE WITNESS: When he pulled out the money he pulled out the exact amount.

CROSS EXAMINATION

BY MR. MICHAELS:

Q Mr. Bullock, looking at 3506, which is the statement Mr. Welch handed to you to refresh your recollection; is that right?

A Yes.

Q You did indicate that Mr. Denson had been in several times asking about this car?

A Yes.

Q And he indicated his interest in the car?

A Yes.

Q And you told him all along the car was $2,000.?

A Yes.

Q And that was your firm price?

A Yes.

Q So if somebody wanted to buy it they would come in with two thousand dollars?

A Yes.

MR. MICHAELS: Thank you.

MR. WELCH: Nothing further, thank you.

THE COURT: What kind of a car was it?

THE WITNESS: It was a '71 Chevrolet.

REDIRECT EXAMINATION

BY MR. WELCH:

Q Can you describe that car to us?

A It was a beige color with brown vinyl top.

Q Two door or four door?

A Two door.

THE COURT: Sedan?

THE WITNESS: Yes.

Q Do you know a Mr. Michael Cohen?

A Yes I do.

Q Did you see him at the station about five or six o'clock on the day that Mr. Denson was there?

A I seen him earlier.

Q About what time of the day was that?

A That might have been around twelve or so.

MR. WELCH: No further questions. Thank you Your Honor.

MR. MICHAELS: I am sorry Your Honor, may I have another question?

THE COURT: Yes.

RECROSS EXAMINATION

BY MR. MICHAELS:

Q I think you did tell the F.B.I. that he did not take a bill of sale, or you did not give him a bill of sale?

A No.

Q All you did was sign the registration?

A Yes, I did.

MR. MICHAELS: All right. Thank you.

THE COURT: You are excused.

(Witness excused.)

MR. WELCH: If Your Honor please, the United States calls Mr. James Savage.

J A M E S F. S A V A G E , Jr.

called as a witness in behalf of the Government being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. WELCH:

Q Mr. Savage how are you employed?

A I am a special agent with the Federal Bureau of Investigation.

Q Were you so employed on September 20, 1973?

A Yes, I was.

Q Directing your attention to September 20, 1973, in the course of your duties as a special agent with the F.B.I. you /have occasion to see Mr. Robert Lee Denson, Jr.?

A Yes, I did.

Q What were the circumstances of seeing Mr. Denson? You see him on the street?

A Pardon me?

Q Tell the ladies and gentlemen of the jury what it was?

A He was being transferred to our custody by special agents of the Federal Division.

Q When you saw him at that time do you recall what he was wearing?

A Yes, I do.

Q Tell the ladies and gentlemen of the jury what he was wearing?

A He was wearing a light cream color cap and light brown leather jacket.

Q Can you describe the car any more than a light color or cream color cap?

A It appeared to be of a cloth material; a so-called, I believe it is described as an apple cap, the top of which

can snap down at the brim.

Q It has a brim?

A Yes.

Q Long brim or short brim?

A A short brim.

Q What else did he have on that day?

A A blue sport short, -- a blue print sport shirt; grey work slacks with pony(?) type cuffs; he had white sneakers, high sneakers that came above the ankle; the high-rise or high type sneakers.

Q Do you recall what he had in his personal possession that day?

A Yes. We received from the agents to whom he had previously been in custody an envelope containing his personal effects.

Q Tell us what was in those personal effects.

A Yes. Approximately twelve dollars in U.S. currency and some change; a wallet containing a small piece of paper, with a note and telephone number. I believe there was a Selective Service card in the wallet; there was a watch and chain pendant; there were two pay stubs from Ford Motor Company.

Q Pay statements?

A Statements of earnings I believe was printed on the forms.

Q Do you recall what the pay amount was on those stubs?

MR. MICHAELS: I object. If he has them can't they be produced as the best evidence?

Q Do you have those pay stubs, Mr. Savage?

A No, I do not.

MR. MICHAELS: Then I object to his recollection. They must be in their possession.

THE COURT: Overruled. No, I will sustain it at this point.

Q Mr. Savage tell us if there was anything else in his personal effects?

A Yes. There was also a bill of sale or a yellow sales slip from a men's shop in Detroit. Jack's Men's Shop.

Q Do you have them?

A Yes, I do.

Q Can we see them please?

A It is in the office.

MR. MICHAELS: I am going to object to the sales ticket.

THE COURT: Where is your office?

THE WITNESS: In the United States Attorney's office.

THE COURT: What happened to those papers that were in the defendant's possession? Where are they?

THE WITNESS: I have indicated in the report ---

THE COURT: Where are they? I didn't say what you indicated.

THE WITNESS: They were all returned to the United States Marshal.

THE COURT: Do you know who has them now?

THE WITNESS: The only slip I maintained in my custody was the bill of sale.

THE COURT: Are you surprised that you are here as a witness this morning?

We will take a recess at this point. Let the F.B.I. get their papers. Return at two fifteen. Don't talk about the case or les anybody talk to you about the case.

(Whereupon at 12.24 p.m. o'clock a luncheon recess was taken to 2.15 p.m. o'clock of the same day.)

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AFTERNOON SESSION

APPEARANCES: Same as morning session.

(The following took place in open court without the jury present.)

THE COURT: Did the F.B.I. find its papers?

MR. WELCH: We are ready to proceed.

THE COURT: All right.

MR. WELCH: We have a stipulation which we have agreed upon, one which Your Honor has heard on relevancy, and we are inquiring whether you want to do it now.

THE COURT: We will do it now.

MR. MICHAELS: We have discussed this during the recess. He asked me to stipulate to a couple of pieces of proof, which would be produced, if one witness came from Michigan, the Ford Motor payroll clerk.

THE COURT: Isn't the thing to do, to write your stipulations down and sign it. That is the most logical way to do it.

MR. MICHAELS: I have not agreed to it yet.

THE COURT: If you have not agreed to it I can't do anything about it. First agree to do it then if you have something to rule on then I will rule on it. I don't want to hear anything

that you won't agree on.

MR. MICHAELS: If I may say, I am trying not to be difficult to the government's position.

THE COURT: I don't care whether you are being difficult or not. Just do your job.

MR. WELCH: May I proffer the stipulation at this time?

THE COURT: Write it out.

MR. WELCH: We have written one.

THE COURT: Read it.

MR. WELCH: If called, Mr. James Kahn(?) would testify he is payroll accountant for the Ford Motor Company and his records reflect R. Denson was employed to August 24, 1973, with a total gross earning of $304.50 and a total net earning of $214.41, and the address listed was 5646 24th Street, Detroit, Michigan; and the Social Security No. is 105 40 279.

MR. MICHAELS: Now, Your Honor, I want to say right now I am perfectly willing -- that Mr. Welch allowed me to speak with Mr. Kahn at the same time he did and I have no doubt as to the accuracy of that information and if the Court rules that it is relevent and probative I will make that stipulation and recommend to my client to enter

into it. But I oppose it at this point. I don't see any probative value.

THE COURT: If you don't stipulate I have no problem. You are asking for an advisory opinion. If you want to stipulate to those facts then I will rule on the relevancy, but not before.

MR. MICHAELS: Do I understand the Court, even if I stipulate I still reserve ---

THE COURT: You still reserve the right to object. You just stipulate that if the witness were called that is what he would testify to, subject to the ruling of the Court.

MR. MICHAELS: I thought this might be the best way to do it, but I will be glad to make those stipulations in behalf of Mr. Denson but I will reserve the right to object.

THE COURT: Read the stipulation again.

MR. WELCH: If called to testify, Mr. James Kahn would testify he is the payroll clerk-accountant for the Ford Motor Company, at Dearborn, Michigan, and that his records reflect R. Denson was employed from August 15, 1973 to August 24, 1973 with a total gross earning of $304.50, and a total net earning of $213.41; and the address listed was 5666 24th Street, Detroit, Michigan; and the Social

Security Number was 105 40 7279.

THE COURT: Why do you say it is irrelevant?

MR. MICHAELS: I sai it is irrelevant because it refers to a period of time in August, beginning and ending at a point approximately three to four weeks before this alleged robbery. I don't know what it proves except the fact the man had a job in Detroit. It doesn't offer any proof of guilt or anything.

THE COURT: Why do you say it is relevant?

MR. WELCH: There is a recent Second Circuit case which ---

THE COURT: I don't care about that.

MR. WELCH: It proves the pecuniary condition of this defendant, who earned approximately two hundred dollars, and that is the net income we got on this man, and yet he is coming up with two thousand dollars for an automobile purchase.

MR. MICHAELS: I say if that is the governments object they must try to show what he was doing between August 24th and September 12, 1973. It is not our obligation to show what type of employment he was occupied with. This would leave the impression with the jury that he was out of work. And that is unfair.

THE COURT: Well there is no question in my mind whatever of the impecunity of the defendant being relevant particularly when he pays two thousand dollars cash for an automobile on or about the time of the robbery, but I don't think it shows impecunity but shows gainful employment for two weeks, some three or four weeks earlier. I will exclude it.

MR. MICHAELS: If the Court will give us two minutes we will write out the other one we were talking about.

THE COURT: All right.

(Discussion between counsel held off the record.)

MR. MICHAELS: I have it written here, Your Honor. This is actually Mr. Welch's proposed stipulation but it is in my handwriting. Apparently Mr. Welch's proposed stipulation is this. If called to testify the Honorable Charles Barrett would testify that he is a Justice of the Peace in Batavia, New York, and that on September 20, 1973, Mr. Robert Lee Denson paid two hundred twenty dollars in cash in payment of various traffic finds resulting from his arrest on the New York State Thruway in Batavia, New York for speeding on that day. This is his

proposed stipulation and once again I oppose it.

THE COURT: On what grounds?

MR. MICHAELS: Again on the basis of relevancy of showing that Mr. Denson was in possession of two hundred twenty dollars some eight days after the robbery had occurred. I don't see again its importance unless the government can establish what was going on inbetween.

THE COURT: It is plainly relevant. Your argument goes to it's weight not relevancy or immateriality.

MR. MICHAELS: I take it I am overruled.

THE COURT: Yes.

MR. MICHAELS: I will recommend to Mr. Denson in the expediency of this case to permit me to enter into that stipulation having already objected and been overruled by the Court.

Will you permit me to make that stipulation?

THE DEFENDANT: Yes.

THE COURT: All right.

MR. WELCH: Thank you, Your Honor.

THE COURT: Are you ready now?

MR. WELCH: We are prepared to proceed with Mr. Savage's direct.

THE COURT: All right. Bring the jury in.

(At this point the jury was returned to the courtroom.)

MR. WELCH: Will you mark this as Government's exhibit ---

(Document marked as Government's Exhibit No. 11 for Identification.)

THE COURT: Proceed.

J A M E S F. S A V A G E , Jr.

having previously been sworn, resuming the stand testified further as follows:

DIRECT EXAMINATION (Continuing)

BY MR. WELCH:

Q Mr. Savage this morning I had asked you to tell the ladies and gentlemen of the jury the items you found in Mr. Denson's possessions on September 20, 1973. Do you recall testifying about that?

A Yes, I do.

Q Mr. Savage I hand you what has been marked as Government's Exhibit 11 for Identification; have you seen that before today, Mr. Savage?

A Yes I have.

Q Was that in Mr. Denson's personal property on September 20, 1973?

A Yes, it was.

MR, WELCH: Thank you, Your Honor. I have no further questions.

CROSS EXAMINATION

BY MR. MICHAELS:

Q Mr. Savage a couple of questions only. I think you were talking this morning about something you called an apple cap or an applejack cap; I think that is what you found Mr. Denson wearing?

A Yes, I described it as that.

Q Have you seen caps like that before?

A That type cap?

Q Yes, that type of cap?

A Yes.

Q In fact is it a fair statement to say that that type of cap, applejack cap, is a fairly common type cap worn by negro -- blacks today?

A I would say so.

Q A lot of black men wear that type of cap?

A Yes.

Q As a matter of fact a lot of young black men wear that kind of a cap?

MR. WELCH: Objection. It is calling for a conclusion by the witness.

THE COURT: Overruled.

A Will you repeat the question.

THE COURT: A lot of young blacks wear them. Have you seen a lot of them?

THE WITNESS: Yes, I have.

BY MR. MICHAELS:

Q When you picked up and first saw Mr. Denson, you described quite carefully this morning the appearance that he made, referring to his clothing. I would like to ask you now, did he have a moustache?

A You are referring to September 20th, when I first saw him?

Q Yes.

A I believe he had some growth. Whether that was in fact a moustache I don't know.

Q When you made that answer you gestured to the area above your lip?

A Yes.

Q Did he have some growth below his lip?

A I should have said some growth here and also some growth there (indicating). I would not call it a moustache.

THE COURT: You are referring to your upper lip and chin, when you say "here"?

THE WITNESS: I am referring to the upper lip.

THE COURT: The record won't show what "here" means. That may be out on the window.

Q When you said "some growth" you mean what a man would have

if he had not shaved for a day?

A No. What he would have if he had not shaved for several days. That is what it appeared to me to be.

MR. MICHAELS: Thank you.

MR. WELCH: Thank you, Mr. Savage.

THE COURT: You are excused.

(Witness excused.)

MR. WELCH: Your Honor may I read this stipulation to the jury at this time?

THE COURT: Sure.

MR. WELCH: (Reading)

"If called to testify the Honorable Charles Barrett would testify that he is a Justice of the Peace in Batavia, New York, and on September 20, 1973, Mr. Robert Lee Denson paid two hundred twenty dollars in cash in payment of various traffic fines resulting from his arrest on the New York State Thruway in Batavia, New York, for speeding in the east bound lane that day."

MR. MICHAELS: In accordance with the previous ruling it was so stipulated and so stipulated on behalf of the defendant individually.

MR. WELCH: If Your Honor please, at this time it is our intention to call one of the other defendants we discussed earlier this morning.

THE COURT: Is his counsel present?

MR. WELCH: I have not seen him.

THE COURT: I don't think we should call him without his counsel. I am advised by the Clerk who said he left Auburn by one o'clock. If that is so he should be here any minute unless he stopped for lunch along the way. I guess we will have to take a short recess while we are waiting.

MR. WELCH: Thank you, Your Honor.

(At this point the jury retired from the courtroom.)

(A short recess was taken after which the following occurred in the absence of the jury.)

(Present: William McKeon, assigned counsel to Defendant Raymond Jones.)

THE COURT: What is your name, sir?

MR. McKEON: William H. McKeon.

THE COURT: And you are counsel for whom?

MR. McKEON: Jones. The defendant.

MR. MICHAELS: I just received information from the Marshal. May I approach the Bench with Mr. Welch?

THE COURT: Sure.

(The following took place at the Bench between the Court and both counsel.)

MR. MICHAELS: This was a subpoena issued to Mr. Weatherup. It is my understanding that Mr. Weatherup has plans to come to Utica and could be served here, because of the Marshal's difficulty in serving him. The way proof is going in today and the fact that he won't be able to be here until tomorrow morning, and if Jones doesn't finish today, would you have any objections to my taking him out of order? Apparently he has to go to Florida.

THE COURT: We will take him out of order if there is no objection.

MR. WELCH: No objection.

(At this point the jury was returned to the courtroom and the following occurred in open court.)

MR. WELCH: If Your Honor please, the United States calls Raymond Jones.

RAYMOND W. JONES

called as a witness in behalf of the Government being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. WELCH:

Q Mr. Jones where did you live in September 1973?

A 101 Almond Street,

Q In what city?

A Syracuse.

Q Do you know where the East Side Branch of the First Trust and Deposit is located in Syracuse?

A It is on Cherry and Lexington, I think.

Q That is the bank I am referring to when I ask these questions. On September 12, 1973, at approximately three p.m. were you in that bank at Cherry and Lexington?

A Yes, I was.

Q Could you tell the ladies and gentlemen of the jury what you were doing there?

A What I was doing in the bank?

Q Yes.

A I was robbing it.

Q Was Robert Lee Denson with you there robbing the bank that day?

A No, he wasn't.

Q He was not?

A No.

Q Who else was with you?

A Kelvin Broadwater and a brother from Buffalo -- Kinimo.

Q Where did you say he was from?

A Buffalo.

Q Do you know where this man is today?

A No, I don't.

Q Prior to robbing the bank that day did you see Robert Lee Denson at any time?

A No, I didn't.

Q You did not?

A No.

Q After robbing the bank ---

THE COURT: On that day did you see Robert Lee Denson at any time, on September 12, 1973, the day you robbed the bank?

THE WITNESS: No, I didn't.

Q Could you tell us if you know Mrs. Rosalie Armster?

A I am acquainted with her.

Q Do you remember whether you saw her on September 12th, 1973?

A I did. On two or three occasions.

Q When was the first occasion that you met with her?

A It was approximately six thirty in the morning, give or take five minutes, ten minutes.

Q And when was the next time that you met with her?

A I would say about three thirty that afternoon.

Q Did you meet with her other than that six thirty in the morning time that day?

A Not to my knowledge.

Q And at that time in the morning was Robert Lee Denson present with you when you met with Rosalie Armster?

A No, he wasn't.

Q Will you tell us what happened after you robbed the bank? Where did you go and what did you do with the money?

MR. MICHAELS: Before he answers that question, may I note an objection. I don't see where this is relevant, what he did. This man is not on trial.

THE COURT: Overruled.

BY MR. WELCH:

Q You may answer the question, Mr. Jones.

A When I left the property, we left the bank, we went down I believe it is East Fayette Street. We continued to my house where we stopped and left Broadwater off, on the intention of coming back and picked him up. We went on to my house and went over to my aunt and counted the money that we got from the bank.

Q How much money did you count?

A Roughtly, I say, around twenty to twenty-two, twenty-three thousand dollars.

Q What did you do with the money?

A The brother I mentioned was counting it -- was counting out the money, and he said he didn't think it wise that we keep the money on our person, that we take it and hide it somewhere. And I had enough faith in him to do

so, and I left me three thousand dollars so I had money to purchase an automobile, and he left. And that is the last time I see him. And I got a call at nine thirty that night from Mrs. Broadwater asking if I see him. I said, "No. Why?" She said the F.B.I. just left the house and fifteen minutes before there was a phone call and the F.B.I. and police came and took me downtown for questioning. I went down I would say about ten o'clock and about -- this is for questioning -- and three o'clock I was given my rights. About three thirty they asked me some more questions, after I was given my rights, about the bank robbing. And Rose Armster said I had three thousand dollars, which I did, because she seen the man give it to me. I returned the money to the Syracuse police and I was booked.

Q You tell the police about your part in the robbery?

A No, I didn't.

Q Did you ab any time tell the Syracuse Police Department about your part in the robbery?

MR. MICHAELS: I object. The man just testified ---

THE COURT: I heard what he testified to. What is your objection?

MR. MICHAELS: The objection is this. What he may have said to the police -- I don't know

the exact purpose of this question, unless he has other purposes.

THE COURT: Will you state your objection.

MR. MICHAELS: I question the relevancy of any statement he gave to the police being stated by this man at this time.

THE COURT: Overruled.

BY MR. WELCH:

Q Did you tell the Syracuse Police Department about your part in the crime, at any time? Your involvement?

A No, I didn't.

Q You didn't talk to any members ---

A (Interrupting) I didn't say I didn't talk to them. I said I didn't tell them any active part of my being involved in the robbery.

Q What did you tell them about the three thousand dollars?

A That it was given to me.

Q You at any time tell them that Mr. Denson was involved in the robbery?

A No, I did not.

Q When were you questioned? On September 12th or 13th?

A September 12.

Q Before you were arrested after the bank robbery, were you on Midland Avenue at any time, in Syracuse?

A Was I on Midland Avenue? I was on Midland Av. Midland

and Castle.

Q Do you remember about what time that was?

A I would say around four thirty.

Q In the afternoon?

A Right.

Q And who was with you if anybody?

A The three I mentioned.

Q Was Robert Lee Denson with you?

A No.

Q Was Robert Lee Denson -- withdrawn. Were you in Midland Avenue at any time on that day when Robert Lee Denson was with you?

A Can you repeat the question?

Q At any time after you robbed the bank, or before you robbed the bank, were you at any time on Midland Avenue in the presence of Robert Lee Denson?

A No, I wasn't.

MR. WELCH: I have no further questions, Your Honor. Thank you.

MR. MICHAELS: No questions. Thank you.

THE COURT: You are excused.

(Witness excused.)

MR. WELCH: May we approach the Bench, Your Honor?

THE COURT: Yes.

(The following discussion took place at the Bench between Court and counsel, outside the hearing of the Jury.)

MR. WELCH: If Your Honor please, I had only one witness remaining. There was some mix-up in the Marshal's office, on service. He is located in Detroit, Michigan. Runs a business there. He is the man who would identify that sales slip. He indicates it is impossible to get a flight to get here by tomorrow morning. Other than that we have no direct testimony.

However in view of this surprise with the two witnesses we request permission to put on three witnesses who can testify that Kelvin Broadwater, Raymond Jones and Robert Lee Denson were picked up and rode with them and were transported to the home of Jones. Further we have testimony from a witness as to statements made by Raymond Jones in the presence of Robert Lee Denson that "we are going to rob a bank."

THE COURT: Why do you need my permission.

MR. WELCH: I don't have them here now. But we do intend to have them here tomorrow.

THE COURT: What you mean is that you have run out of witnesses?

MR. WELCH: Yes, sir.

THE COURT: All right. Until tomorrow morning.

MR. MICHAELS: The fact that I was calling the man out of order wouldn't mean that I was not opposed to these witnesses.

THE COURT: Of course not. You can oppose them, any one or all of them.

(The following took place in open court with the Jury present.)

THE COURT: We have run out of witnesses due to transportation problems. We will recess now until tomorrow morning at ten thirty. Don't talk about the case; don't let anybody talk to you about it. Good night.

(Whereupon at 3.25 p.m. o'clock an adjournment was taken to February 15, 1974, at ten thirty o'clock a.m.)

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

- -x

UNITED STATES OF AMERICA,

- against - : 73-Cr-194

ROBERT LEE DENSON, Jr.,

Defendant.

- -x

The trial in the above-entitled matter was continued, pursuant to adjournment, at the United States District Court held in and for the Northern District of New York, at Utica, N. Y., on February 15, 1974, at ten thirty o'clock a.m. before HON. LLOYD F. MacMAHON, United States District Judge sitting by designation, and a Jury.

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A P P E A R A N C E S:

HON. JAMES M. SULLIVAN, Jr., United States Attorney for the Northern District of New York, Federal Building, Syracuse, New York, By: EUGENE WELCH, ESQ., Assistant United States Attorney, Of Counsel, appearing in behalf of the United States of America;

- and -

LEE S. MICHAELS, ESQ., Attorney and Counsellor at Law, Metcalf Plaza, Auburn, New York, Assigned, appearing in behalf of the Defendant.

Defendant in person.

- - - - -

MR. MICHAELS: May we approach the Bench?

THE COURT: Come up.

(The following discussion was held at the Bench between Court and counsel, outside the hearing of the Jury.)

MR. MICHAELS: Your Honor, Mr. Weatherup is here. He is the witness I intend to call, who informed me that he is leaving for Florida this afternoon so that he would appreciate going on this morning.

There were two choices I had. One, I

don't like the idea of going out of turn, going out of order.

THE COURT: You don't have to go out of order. Mr. Weatherup's plans are secondary to this trial.

MR. MICHAELS: Mr. Welch and I have discussed this and he has agreed, if the Court agrees, that during the recess this morning that Mr. Weatherup's deposition be taken. Then I would be allowed, if I chose, at the appropriate time to actually read his deposition.

THE COURT: How long will he take? How long will his testimony be? Five minutes?

MR. MICHAELS: Perhaps even less.

THE COURT: Do you expect to finish this morning?

MR. WELCH: No Your Honor, not at this time.

THE COURT: Well either way is alright with me. If you want to accomodate him we can wait or take him out of order.

MR. MICHAELS: I would prefer to take the deposition.

THE COURT: All right. Put him on the stand and examine him in front of me.

MR. MICHAELS: Thank you very much, Your

Honor.

THE COURT: Then the Court Reporter can read it back. You understand, and I want your client, Mr. Denson, to understand, that you have the right to have the jury see this witness and hear him testify. Are you willing to waive that right; give up that right?

THE DEFENDANT: No.

THE COURT: You want him here?

THE DEFENDANT: Yes.

MR. MICHAELS: For the Jury to see him?

THE DEFENDANT: Yes.

MR. MICHAELS: I will withdrew my request and ask that he be taken out of order.

THE COURT: All right. Bring the jury in.

(At this point the Jury was returned to the Courtroom where the following proceedings were had in open court with the jury present.)

MR. MICHAELS: Mr. Weatherup, please.

P A U L J. W E A THE R U P

called as a witness in behalf of the Defendant, being first duly sworn, was examined and testified as follows:

THE COURT: Ladies and Gentlemen. We are

taking the witness, Mr. Weatherup, who was one of the employees of the bank, out of order in order to accommodate him. He planned to leave on his vacation this afternoon and he is being called by the defense, so he is being taken out of order as a defense witness with everyone's consent.

MR. MICHAELS: Thank you, Your Honor.

DIRECT EXAMINATION

BY MR. MICHAELS:

Q Mr. Weatherup could you please state where you live, sir?

A I live in Syracuse, New York.

Q Where are you currently employed?

A First Trust and Deposit Company.

Q And what is your position with the First Trust and Deposit Company?

A Branch manager and officer in charge of one of our local offices.

Q Would that be on the East Side Branch located at Cherry and Lexington, in Syracuse?

A Yes.

Q Were you in that position in September 12th, 1973?

A Yes sir.

Q I believe it has been established in this courtroom that there was a robbery in that particular bank that took place on that day. Is that right?

A Yes.

Q And that you were a witness to that robbery?

A Yes, sir.

Q Now, Mr. Weatherup, you are here pursuant to a subpoena served upon you at my request; is that right?

A Yes.

Q Q Prior to today, am I correct that you were one of two witnesses called by the government at a preliminary hearing before Magistrate John McClaim, back in September?

A Yes.

Q Am I also correct that you were one of two witnesses called before Judge Burke in Syracuse City Court in September?

A Yes Sir.

Q Am I also correct that you testified before the grand jury?

MR. WELCH: May I object to the relevancy of this line of questioning.

THE COURT: Yes. Sustained.

Q Mr. Weatherup in your testimony --- strike that. Mr. Weatherup do you recall that in your statement to the Syracuse City Police ----

THE COURT: You can put the direct question to him, Mr. Michaels. What he said somewhere else we are not concerned with unless you want to impeach him.

MR. MICHAELS: I am sorry, Your Honor. I beg your pardon.

BY MR. MICHAELS:

Q Mr. Weatherup I show you ---

MR. MICHAELS: I better have these marked.

(Affidavit of Paul J. Weatherup marked as Defendant's Exhibit A for Identification; affidavit of Alton Isaac marked as Defendant's Exhibit B for Identification.)

BY MR. MICHAELS:

Q Mr. Weatherup I show you Defendant's Exhibit A for Identification and ask you if you can identify that document, sir?

A Yes, sir.

Q Am I correct that that is a statement given by you to the Syracuse City Police on the 12th of September?

MR. WELCH: Again I object to the relevancy of all this.

THE COURT: Sustained.

Q Mr. Weatherup have you previously ---

THE COURT: Sustained.

MR. MICHAELS: May I approach the Bench, please?

THE COURT: Yes. Sure.

(The following discussion was held at the

Bench between Court and counsel outside the hearing of the Jury.)

MR. MICHAELS: I am not being allowed to ask questions.

THE COURT: You may ask any question you want that is proper. These are not proper.

MR. MICHAELS: That on a previous occasion he saw Broadwater and Jones and that he made certain statements?

THE COURT: You can get those facts but the way you are going about it is improper. First you have to ask proper questions and then if there are inconsistent statements then you can ask him the way you first started.

MR. MICHAELS: Thank you, Your Honor. I will.

BY MR. MICHAELS:

Q Mr. Weatherup on September 26, 1973, did you view Mr. Kelvin Broadwater and Mr. Robert Denson in a courtroom in the City of Syracuse?

A Yes sir.

Q And at that time did you see them both standing?

A Yes sir.

Q And at that time did you acknowledge that Mr. Denson was considerably larger in weight than Mr. Broadwater?

A Yes sir.

Q And had you previously told the police ---

A (Interrupting) No.

Q (Continuing) ... the following statement?

MR. WELCH: Objection, Your Honor.

THE COURT: Sustained.

BY MR. MICHAELS:

Q Mr. Weatherup was your first description of the man you identified ---

THE COURT: How about his description? How did you first describe the defendant when you were first asked to give a description? How did you first describe him, do you recall?

THE WITNESS: You mean his hair, his weight or height, Your Honor?

THE COURT: I mean as far as you described it, whether it was weight, height, color of hair, color of face. Anything. Any description that you gave. Do you recall how you first described him?

THE WITNESS: It is in my affidavit.

THE COURT: I am not asking that. Do you remember how you described him?

THE WITNESS: Between six and six foot two.

THE COURT: Anything else?

THE WITNESS: One hundred eighty pounds.

THE COURT: Did you describe his color?

THE WITNESS: Yes.

THE COURT: Tell us what description you gave, as best you can remember.

THE WITNESS: He was dark.

THE COURT: Anything else?

THE WITNESS: What they were wearing or anything like this?

THE COURT: Would it help you to remember if you looked at Exhibit A? Would that help you remember whether you described anything else at that time? Read it to yourself.

MR. WELCH: If Your Honor please, may we approach the Bench while Mr. Weatherup reads that?

THE COURT: Yes.

(The following discussion was held at the Bench between Court and counsel outside the hearing of the Jury.)

MR. WELCH: Your Honor may the government have a continuing objection to what Mr. Weatherup did in prior testimony as irrelevant, until he tells us something about what he witnessed of the crime we are trying here.

THE COURT: I don't know what you are trying to establish.

MR. MICHAELS: I am trying to establish that this man, in his statement, he stated under oath, he described him as one hundred sixty, one hundred eighty pounds.

THE COURT: So he had a different weight.

MR. MICHAELS: That they were different -- in fact he had Mr. Broadwater being a larger man than Mr. Denson. When confronted with the two of them face to face in court at Syracuse he for the first time acknowledged that his description was in error because Mr. Denson is obviously ---

THE COURT: You can bring out all those facts, but I think you would start at the beginning when he observed the three men at the bank and did he thereafter describe them; did he thereafter change his mind; under what circumstances was he mistaken about his description; did he thereafter correct it. Bring out the facts.

MR. MICHAELS: Okay.

THE COURT: I would first bring out his observations at the bank.

(The following took place in open court with the Jury present.)

BY MR. MICHAELS:

Q Mr. Weatherup let's get this clarified. You were a

not to this alleged robbery on the 12th of September?

A Yes sir.

Q In fact -- withdrawn. Now following, I think you just described it, but following that robbery did you give a statement to the Syracuse Police in which you identified the three men by size and weight?

A Yes sir.

Q Color of skin and clothing?

A Yes sir.

Q And subsequent to that did you attend a line-up?

A Yes sir.

Q And in that lineup did you select Kelvin Broadwater?

A Yes sir.

Q In that lineup did you select Raymond Jones?

A Only by physical resemblance.

Q Now in your description of Kelvin Broadwater did you describe him in your first observation as being a man of approximately one hundred seventy, one hundred eighty pounds?

MR. WELCH: Again the same objection.

THE COURT: Overruled.

A Yes, sir.

Q And having read Defendant's Exhibit A to refresh your recollection did you describe Robert Denson as one hundred sixty pounds?

A Approximately one hundred sixty pounds.

Q And then at the preliminary hearing held on the 26th of September, 1973, you were confronted by Mr. Denson and Mr. Broadwater; correct?

A Yes, sir.

Q Did you at that time acknowledge that your original description of the weight had been in error?

A Yes, sir.

Q You asknowledged when faced with those men that Mr. Denson was substantially heavier than Mr. Broadwater?

A Yes, sir.

MR. MICHAELS: Thank you very much.

THE COURT: All right.

CROSS EXAMINATION

BY MR. WELCH:

Q Mr. Weatherup in response to Mr. Michaels' questions you said you chose Mr. Broadwater in a lineup and someone you described by physical appearence as Mr. Jones?

A Yes.

Q Do you recall what date that line up was?

A September 13th.

MR. WELCH: No further questions.

THE COURT: Mr. Weatherup where were you when the three men came into the bank?

THE WITNESS: I was in my office.

THE COURT: Where was your office? Did you have an open view of the bank proper?

THE WITNESS: Yes. The office is located in the front of the bank and I have a view of the tellers' area.

THE COURT: Is your office just a desk with a railing around it?

THE WITNESS: No, a partition.

THE COURT: And you had an open view of the tellers' counters?

THE WITNESS: Yes sir.

THE COURT: Where did the men go as they came in? I gather they went right past you?

THE WITNESS: I did not see them come in the entrance to the bank.

THE COURT: When did you first observe them?

THE WITNESS: When I saw a flash come from the counter of the tellers' area.

THE COURT: When you looked up what did you see?

THE WITNESS: I saw a body inside the telers' area.

THE COURT: What was causing the flashing?

THE WITNESS: A person jumping over.

THE COURT: Tell us what you observed about

it as best you can recall.

THE WITNESS: As best I can recall, as I said before this morning, one was short. The other two were tall. The one that was short had a gun and did come in the office.

THE COURT: Which one had the gun?

THE WITNESS: What I was told later, it was Mr. Broadwater.

THE COURT: Not what somebody told you. You were a witness because you were there. Tell us what you saw.

THE WITNESS: I was on the 'phone. The gentlemen with the sawed-off shotgun pushed open my door and came in the office.

THE COURT: Did you get a good look at him?

THE WITNESS: Yes.

THE COURT: Was he the one with the gun?

THE WITNESS: Yes.

THE COURT: Can you describe him?

THE WITNESS: He was about five eight; five eleven.

THE COURT: What color?

THE WITNESS: Dark.

THE COURT: Was he black?

THE WITNESS: Yes.

THE COURT: Was he wearing a mask?

THE WITNESS: No he was not.

THE COURT: How long did you look at him?

THE WITNESS: He asked me to go out in the lobby. I would say probably two and a half to three minutes.

THE COURT: What did he do with the gun?

THE WITNESS: He pointed it at me and asked me to go out in the lobby and kept pointing it at me and fanning it to the rest of the employees.

THE COURT: Would you describe what kind of a gun it was?

THE WITNESS: It was a double barrelled sawed-off shot gun.

THE COURT: Did that arouse any reaction in you? Any emotion?

THE WITNESS: I was nervous.

THE COURT: Were you frightened?

THE WITNESS: Yes sir.

THE COURT: Did you do as he told you?

THE WITNESS: Yes, I did.

THE COURT: How long did this take?

THE WITNESS: From the time they came in until they left the bank premises?

THE COURT: Yes.

THE WITNESS: Well when I saw the first flash go over the counter it was roughly seven after three and they left twelve or thirteen minutes after three.

THE COURT: Did you get a good look at all three of those men?

THE WITNESS: The other two had stocking masks on.

THE COURT: Is the man with the gun present in the courtroom today?

THE WITNESS: No sir.

THE COURT: He is not?

THE WITNESS: No, sir.

THE COURT: Well when you first were asked to give an identification how was that done? Where were you after the robbery?

THE WITNESS: You mean a description of exactly what happened?

THE COURT: Yes.

THE WITNESS: It was given to one of the F.B.I. men and it was down in the basement of the bank.

THE COURT: When? In relation to the robbery in time?

THE WITNESS: I would say ten or fifteen

minutes.

THE COURT: The same day?

THE WITNESS: Yes.

THE COURT: When were you ever shown any pictures and asked to identify the pictures?

THE WITNESS: Later on that afternoon.

THE COURT: How many pictures were you shown and by whom?

THE WITNESS: I was shown by the Syracuse Police Department in several stacks of photographs.

THE COURT: Did you select any one from those photographs?

THE WITNESS: I selected the gentleman with the gun.

THE COURT: And who was he?

THE WITNESS: Kelvin Broadwater.

THE COURT: You were not able to select anyone else?

THE WITNESS: No.

THE COURT: Following that were you again shown any photographs at any time?

THE WITNESS: No, sir.

THE COURT: What was the next attempt to identify them?

THE WITNESS: Through the line-up, the

following day.

THE COURT: Through a line-up on the following day. That would be September 14th?

THE WITNESS: The 13th.

THE COURT: And at that time how many people were in the line-up?

THE WITNESS: Five or six.

THE COURT: Can you describe them? Were they similar?

THE WITNESS: They were similar in height and all dark skinned.

THE COURT: And did you select anyone from that group of people?

THE WITNESS: I selected Kelvin Broadwater.

THE COURT: Only Kelvin Broadwater?

THE WITNESS: Yes sir.

THE COURT: At any time did you select the man sitting at the counsel table?

THE WITNESS: No sir.

THE COURT: Again I want to say to the jury I am not in the habit of conducting the examination, and I don't like to do it, but I am trying to find out what happened.

All right, you are excused, unless counsel has something more.

MR. WELCH: No, thank you, Your Honor.

(Witness excused.)

MR. WELCH: If Your Honor please, the United States calls Mr. Delmar Breland.

THE COURT: Would counsel come up please.

(The following discussion took place at the Bench between Court and Counsel outside the hearing of the Jury.)

THE COURT: Was the defendant in any line-up where that witness viewed him?

MR. WELCH: No.

THE COURT: He never was in any line-up where this witness viewed him or any other line-up?

MR. WELCH: No. That is correct.

(The following took place in open court with the jury present.)

THE COURT: Counsel have agreed that the defendant Denson was never in any line up, so you have not got a case of a witness viewing the defendant. At a line-up or photographs.

H E N R Y D E L M A R B R E L A N D

called as a witness in behalf of the United States being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. WELCH:

Q Mr. Breland how old are you?

A 19.

Q Where do you live?

A 517 Garfield Avenue.

Q In what city?

A Syracuse.

Q Did you live there in September 1973?

A Yes sir.

Q In September 1973, Mr. Breland, did you know Mr. Robert Lee Denson?

A Yes.

Q Did you know Mr. Robert Lee Denson on September 12, 1973?

A Yes.

Q How long prior to that date had you known him?

A I don't really know how long I know him.

Q Had you met him on more than one occasion prior to that date?

THE COURT: Answer. Don't nod your head.

A Yes.

Q On September 12, 1973 you know Mr. Raymond Jones?

A Yes, I knew him.

Q Did you see him on any occasions prior to September 12, 1973?

A Yes.

Q On September 12, 1973 did you know Mr. Kelvin Broadwater?

A Do you mean Kag?

Q Did you know anybody by the name of Broadwater?

A Didn't know his last name.

Q Now directing your attention to September 12, 1973, tell us whether or not you saw Mr. Robert Lee Denson on September 12, 1973?

A I don't know what date it was when I see him.

Q Mr. Breland were you ever subsequent to September interviewed by an agent of the F.B.I.?

A Yes.

Q Do you recall his writing down that interview, notes of the interview?

A No, I don't.

Q If I showed you something -- let me ask you to read something to yourself and see if it refreshes your recollection about that particular date that I asked.

MR. MICHAELS: Objection.

THE COURT: Overruled. Mark it.

MR. WELCH: Your Honor I am showing the witness 3507.

THE COURT: All right.

Q Just read that to yourself.

A (Reads).

Q Have you read enough of that yet to refresh your recollection about the date?

A Yes.

Q Now, Mr. Breland on September 12, 1973, you have occa-

sion to see Robert Lee Denson?

A I don't remember any dates. I don't know the dates.

THE COURT: Having read that, does that help you remember what the date was?

THE WITNESS: Yes.

THE COURT: What was the date?

THE WITNESS: September 12th.

BY MR. WELCH:

Q Where did you see Mr. Denson and what time of the day was that; do you recall? Was it morning or afternoon?

A It was in the afternoon.

Q On September 12, 1973, had you heard about a bank robbery at the First Trust & Deposit?

A Later on that night, yes.

Q I see.

THE COURT: What time did you see Denson?

THE WITNESS: Pardon.

Q THE COURT: What time did you see him on that day?

THE WITNESS: It was -- I think it was around four o'clock.

BY MR. WELCH:

Q Where did you see Mr. Denson that day?

A On Midland.

Q On Midland Avenue?

A Yes.

Q In the City of Syracuse?

A Yes.

Q Who else was with him, if anybody?

A Kag and Raymond.

Q What if anything did you do or did they do or you see them do on Midland Avenue at four o'clock?

A Somebody axed us to give them a ride so I said "Yes". So I gave them a ride to where they was going.

Q And where was that?

A On McKinley Av.

Q Do you remember the number on McKinley Av.?

A No.

MR. WELCH: I have no further questions.

MR. MICHAELS: May I have a copy of the 3507?

(Mr. Welch hands documents to Mr. Michaels.)

MR. MICHAELS: May I just have a moment to read it?

THE COURT: Yes.

(Mr. Michaels reads documents.)

CROSS EXAMINATION

BY MR. MICHAELS:

Q Mr. Breland this exhibit that you looked at, am I correct that if you look at that you were interviewed in the middle of November 1973? Does that refresh your

recollection of the date in the upper right hand corner, 11/16/73?

A Yes.

Q Am I wrong? That is what it says?

MR. WELCH: Would Your Honor indulge us for a moment? There is a confusion about dates.

THE COURT: Yes.

Q November 9, 1973; the date in the lower left hand corner. You were interviewed on November 9, 1973, by an agent of the F.B.I.?

A The only time I remember being interviewed was September 12th. The next time was this morning, when they came and got me.

THE COURT: You were never interviewed after September 12th?

THE WITNESS: No.

BY MR. MICHAELS:

Q Are you sure that Mr. Simpson, Mr. George P. Simpson, a special agent, didn't come to see you in November? Wasn't it two months after the robbery that you were first contacted by an investigator? You were not contacted on September 12th, were you?

A It was September 12th.

Q Do you know -- I am not trying to trick you on the date, I am asking you what date you were interviewed. Who

was it came to see you?

A An F.B.I. agent.

MR. MICHAELS: Do you have the record of interview on September 12th, 1973?

THE COURT: Mr. Welch?

MR. WELCH: No, Your Honor.

Q Just look at the statement you gave and look at the date and tell me if that doesn't refresh your recollection of when you were interviewed?

A It don't.

MR. MICHAELS: May we approach the Bench.

THE COURT: Yes.

(The following discussion was held at the Bench outside the hearing of the Jury.)

MR. MICHAELS: Gene tells me I am correct, that the interview --- there was another interview.

THE COURT: He just said there wasn't any other interview.

MR. MICHAELS: Gene tells me there was another interview, other than that date shown up here. I felt the date of the interview was ---

THE COURT: I know that an F.B.I. agent could have interviewed him, but he made no notes. Those are things you fellows should find out before you get in here.

MR. MICHAELS: I didn't know about this guy. Gene tells me this was the first interview. I think that should be stipulated.

THE COURT: You can stipulate if you want to.

MR. WELCH: There was an interview on November 9th. This is a mistake as to the date of the interview.

THE COURT: Go ahead and stipulate.

MR. MICHAELS: All right.

(The following took place in open court before the Jury.)

MR. MICHAELS: Mr. Welch, pursuant to a conversation at the Bench, is it stipulated at this time that regardless of the previous testimony of the witness that he apparently is mistaken as to the interview date, and the date of the interview, or the first interview by the F.B.I. was November 9th, 1973?

MR. WELCH: So stipulated.

MR. MICHAELS: Rather than September 12th, as he so indicated.

MR. WELCH: So stipulated.

BY MR. MICHAELS:

Q Mr. Breland did you hear the stipulation I just made with Mr. Welch?

A. The mistake on the dates?

Q Yes. Did you hear it?

A Yes.

Q And did you understand that it appears as if you are mistaken as to the date that you talked to the F.B.I.?

A Yes.

Q Do you now agree that -- with what we have stipulated on that it was about the second week of November, November 9th, when the F.B.I. man came to see you?

A Yes.

Q Now when the F.B.I. man came to see you was he alone or was he with someone else from the F.B.I.?

A He was alone.

Q Were you alone?

A No. I was at Vic Smiley's house.

Q Is Victor Smiley here to testify too?

A Yes.

Q Is that Victor Smiley waiting outside?

A Yes.

Q Was anybody else there besides you and Victor Smiley?

A There was Jeff Houston.

Q His first name is Jeff?

A Yes.

Q How did the F.B.I. man have occasion to come to Victor Smiley's house? Did he call for an appointment?

A No. He just came, knocked on the door and said "F.B.I."

Q And the three of you just happened to be there together at that time; is that right?

A That's right.

Q When the F.B.I. man first interviewed you did you recall -- how did he interview you? Did he say "Tell me what you know about September 12th?" How did he start the interview?

A Yes. Did we give them a ride.

Q Did he say "Did you give them a ride on September 12th"?

A No he didn't say the date or anything. Yes, I do think he did say the date.

Q In other words what happened was two months after this?

MR. WELCH: Objection.

THE COURT: Yes. Don't sum up.

BY MR. MICHAELS:

Q Now, Mr. Breland, the F.B.I. men came to your house, or to Victor Smiley's house, and he asked you if you gave Denson, Jones and Broadwater a ride on September 12th. Am I right?

A Yes.

Q And this was on November 9th when he asked you this question; correct?

A Yes.

Q And that was about two months after the robbery; is

that correct?

A Yes. It was after the robbery.

Q And it was the F.B.I. man who told you it was September 12th, is that correct?

A If he is the one that said the date.

Q So he told you it was September 12th.

MR. WELCH: I think the witness has answered the question already.

THE COURT: I think he has.

MR. MICHAELS: I think he has too.

I have no further questions.

MR. WELCH: I have nothing further for this witness.

THE COURT: You are excused.

(Witness excused.)

MR. WELCH: Government calls Jeffrey Houston.

JEFFREY HOUSTON

called as a witness in behalf of the United States, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. WELCH:

Q Jeff, keeping your voice up good and loud so everyone can hear you, can you tell us how old you are?

A 17.

Q Where do you live? What city do you live in?

A Syracuse.

Q Jeff, in September of 1973 did you know Bobby Lee Denson?

A Yes, I know him.

Q Did you know Mr. Bobby Lee Denson on September 12, 1973?

A I don't remember dates but I know him.

Q All right. In September 1973 you know Mr. Raymond Jones?

A I know Raymond Jones but I don't know any dates.

Q Did you know him last fall in 1973?

A In the fall? I guess so. If that is when it was I know him.

Q Did you now a Mr. Kelvin Broadwater?

A Yes.

Q Do you know what Mr. Broadwater's first name is?

MR. MICHAELS: Objection. He just said "Kelvin".

Q Do you know Mr. Broadwater by any other name?

A By what we used to call him?

Q Yes. What used you to call him?

A Kag.

Q Now, Jeff, did there come a time when you heard over the radio or anyplace, a news broadcast, of a robbery of the First Trust & Deposit Company, in the City of

Syracuse?

MR. MICHAELS: I object.

THE COURT: Overruled.

Q You hear about that bank robbery?

A Yes, I heard.

Q Q Do you remember the day that you heard about it?

A Yes.

Q That day when you heard about that bank robbery did you see those three men that I just asked you about?

A I know that day but I didn't know they did it.

Q Just answer the question I asked. On that date when you heard about the bank robbery did you see these three men?

A Yes.

Q Where did you see them?

A On Midland.

Q I didn't hear you.

A On Midland.

Q Were they together?

A Yes. When I see them they were together.

Q Tell us what you say them do?

A I didn't see them do anything.

Q What were you doing when you saw -- withdrawn. What were they doing when you saw them?

A They was getting in the car with us.

Q That is what I am asking. Tell us what took place?

A We gave them a ride.

THE COURT: I can't hear you, Mr. Houston. Would you speak up, please?

THE WITNESS: We gave them a ride over to McKinley, I think, yes.

Q To any particular place in McKinley?

A To a house.

Q Anybody's house in particular?

A I don't know whose house it was.

Q Now this was before or after you heard about the bank robbery on the radio?

A After.

THE COURT: Mr. Reporter, will you read back the last question and answer?

(The Court Reporter repeated the last question and answer as above recorded).

THE COURT: What time, do you remember?

THE WITNESS: No.

MR. WELCH: I have no further questions, Your Honor.

MR. MICHAELS: Your Honor, before cross-examining Mr. Houston, may I reserve the right to make a motion on the testimony of the last witness, on his testimony, and before

THE COURT: All right.

CROSS-EXAMINATION

BY MR. MICHAELS:

Q Mr. Houston, I didn't get your street address in Syracuse?

A 307 West Colvin.

Q 307 West Colvin?

A Yes.

Q Do you recall what time it was that you heard about this particular bank robbery?

A No, I don't keep track of time.

THE COURT: Was it in the morning, the afternoon?

THE WITNESS: It was in the evening.

THE COURT: Early evening or late evening?

THE WITNESS: Early.

THE COURT: Early evening?

THE WITNESS: Yes.

BY MR. MICHAELS:

Q Now, am I correct, Mr. Houson, that the first and only time that you were ever contacted by somebody investigating this case was on November 9, 1973? And to refresh your recollection on that date, I show you Exhibit 3508, which is a report of an interview with you by Special Agent Simpson on November 9th?

A Yes.

Q So it was about two months after the incident when you were contacted by the F.B.I?

A Yes.

Q And from what a previous witness told us, you were in a house with Victor Smiley?

A Yes.

Q And Mr. Breland was there?

A Yes.

Q And this F.B.I. man didn't call for an appointment?

A No.

Q He just started talking to you?

A Yes.

Q How long was he there?

A About a half hour.

Q Did he tell you-- withdrawn. I believe you told the Special Agent that $2.00 was paid for the gasoline for the ride that you gave?

A Yes.

Q I believe you also told the Special Agent, according to the statement written up by him, you didn't mention anything about having heard about this on the radio, had you?

A What is that now?

Q In the summary, this is a summary---take a look at

Exhibit 3508---this is a summary by an F.B.I. Agent of his interview with you. Is that correct? Do you agree that that is what that document is, a summary of an interview with you by Special Agent Simpson?

A Yes.

Q Now had you also knowledge and by the 2nd of November, 1973, you were well aware that Jones, Broadwater and Denson had all been arrested, weren't you? You knew that by then, didn't you?

A Yes.

Q Now in that statement as you look at it, that summary, there is nothing in that summary that says that you related this automobile ride with these three men, or having heard about it on the radio; it doesn't say anything about that, does it?

A No.

Q What it says, he summarizes the conversation with you--what the Special Agent said was, "On September 12"---he just uses the date, the date of the robbery, "that you gave them a ride"; is that correct?

A Yes.

Q And he told you, didn't he, that September 12 was the date of the robbery? You didn't know that September 12th was that important?

A No.

Q And he told you that it was on September 12th that you gave them a ride, didn't he?

A Yes.

Q Your answer is what?

A Yes.

MR. MICHAELS: Thank you. I have no further questions.

MR. WELCH: Nothing further. May we approach the bench?

THE COURT: Did you know that the day you gave them the ride was the same day of the robbery?

THE WITNESS: Yes, it was the same day of the robbery.

THE COURT: You knew it was the same day, but you just didn't know the date?

THE WITNESS: Yes.

THE COURT: All right.

MR. MICHAELS: May I ask another question?

CROSS-EXAMINATION (Continuing)

BY MR. MICHAELS:

Q Mr. Houson, the First Trust and Deposit at Cherry and Lexington wasn't the only bank that was robbed in Syracuse that year, was it?

A No.

Q There are a lot of bank robberies in Syracuse, aren't there?

A Yes.

Q You hear about bank robberies all the time, don't you?

A Yes.

Q In fact there was another bank robbery that week?

A Yes.

MR. MICHAELS: Thank you.

THE COURT: All right.

(Witness excused)

THE COURT: We will take a short recess at this time.

(At this point the jury retired from the courtroom).

MR. WELCH: Mr. Victor Smiley is here, Your Honor, and I am advised he participated in this also, this ride giving.

THE COURT: Yes.

MR. WELCH: I don't at this point see any need to call him. I am announcing this here and putting it on the record, we had some difficulty in locating him, and if Mr. Michaels wants him, he is here. I am not going to call him, but I want it clear that he is here.

* * * * *

THE COURT: We will have the witness available for Monday morning. I would direct him to be here.

MR. MICHAELS: Did you say Monday?

THE COURT: I mean Tuesday. All right.

MR. WELCH: We have directed him to be here.

(At this point the jury was brought into the Courtroom).

THE COURT: Go ahead, Mr. Welch.

MR. WELCH: Your Honor, the United States calls Rosa Lee Armster.

R O S A L E E A R M S T E R,

called as a witness, in behalf of the Government, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. WELCH:

Q Now, Mrs. Armster, would you keep your voice up good and loud so all these people can hear you. It is required that everything you say be heard.

Tell the ladies and gentlemen of the jury where you lived in September 1973?

A At 608 Midland Avenue.

Q And what city is that in?

A Syracuse, New York.

Q Directing your attention to September 12th, 1973, did you have occasion to see Raymond Jones that day?

A Was that the day of the bank robbery?

Q Well Mrs. Armster, let me ask you this. Are you aware that there was a bank robbery at the First Trust and Deposit Company at Cherry and Lexington Streets?

A Later that day.

Q On the day that you became aware of that bankrobbery, did you have occasion to see Raymond Jones?

A Yes.

Q When did you first see Raymond Jones that day?

A It was early in the morning, about 8:00 or 8:30.

Q When you first saw him on that occasion, who else was present?

A Bobby Denson.

Q Could you tell us what, if anything, was said or done?

A We were in the bedroom. We were all sitting around.

Q I can't hear you.

A We were all in the bedroom, sitting around. And like at first everybody was talking. Raymond was talking to my cousin, Dora, and I was talking to Bobby about his wife, his children, and wife, and Raymond told us, "we are going to rob a bank."

THE COURT: Who was "Bobby"?

THE WITNESS: Bobby Denson. He was in the bedroom.

BY MR. WELCH:

Q Did Bobby Denson say anything about the bank robbery?

A No.

Q After--let me ask you this, do you recall what Bobby Denson said at that time, that morning, if anything?

A No, he was just telling me about his wife. He showed me a picture of her. And Raymond was the one who said, "we are going to rob a bank."

Q Now you said you heard about a bank robbery later that day. In relation to the time that you heard about the bank robbery on that day, September 12th, you have occasion to see Bobby Denson again?

A Yes. It was about between 3:00 and 4:00, I think. I am not sure of the time.

Q And on that occasion, who else was there, if anybody?

A At first Raymond came to the house and he asked me to go with him, and just as we were leaving, I saw Bobby and Kelvin Broadwater.

Q You know Kelvin Broadwater by any other name?

A Kag.

Q Where did you see them?

A They were just coming into the door.

Q On Midland Avenue?

A Yes.

THE COURT: When was this?

THE WITNESS: I don't know the exact date, but it was the day the bank got robbed.

THE COURT: The day the bank got robbed. What time of the day?

THE WITNESS: It was between 3:00 and 4:00. Between 3:00 and 4:30. I am not sure of the time.

MR. WELCH: Thank you, Your Honor. I have no further questions.

MR. MICHAELS: If Your Honor please, the Grand Jury testimony has just been handed to me.

THE COURT: All right. We will take our luncheon recess until 2:15. That will give Mr. Michaels an opportunity to read that rather lengthy testimony. Don't talk about the case, don't allow anybody to talk to you about it.

(At this point the jury retired from the Courtroom).

MR. MICHAELS: I will move to strike her testimony as impeaching the credibility of the two previous government witnesses.

THE COURT: Motion denied.

MR. MICHAELS: All right.

THE CLERK: Court stands in recess until 2:15.

(Whereupon at this point, a luncheon recess was taken until 2:15 P.M. of the same day).

- - - -

AFTERNOON SESSION

APPEARANCES: Same as morning session.

THE COURT: All right, proceed.

CROSS-EXAMINATION

BY MR. MICHAELS:

Q Mrs. Armster?

A Yes.

Q You testified before the Federal Grand Jury last fall?

A Yes.

Q And now before you testify today, did you at any time have an opportunity to review the transcript of your testimony before that Grand Jury?

A No.

Q This is document 3509. This is a transcript of your testimony. You have never seen that before?

A No.

Q Mrs. Armster, am I correct---

A (Interrupting) Yes.

Q I didn't finish my question. Am I correct, Mrs. Armster, that your testimony was that early in the morning of the 12th of September, Raymond Jones came to your apartment; correct?

A Yes.

Q Having read your testimony, or reviewed it before asking questions, I discover, am I correct, that your

apartment had two rooms in it?

A Three rooms. One bedroom, kitchen and living room.

Q And that the conversation with Raymond Jones took place in which of those three rooms?

A In the bedroom.

Q That would be how large a room?

A 9 by 12.

Q And also present in that room was, I think you mentioned, Bobby Denson?

A Yes.

Q And also present was somebody else, wasn't there?

A Yes.

Q Who was that?

A Dora Bolden.

Q How old is Dora Bolden?

A She is seventeen.

Q I think you also testified before the Grand Jury about having some children?

A Yes, I have four.

Q Were some of those children at home at that time?

A Yes, the two smallest ones.

Q The two smallest ones at that time were how old?

A My little girl is two, at that time. The baby, he is fifteen months old.

Q How old was the first one that you mentioned?

A She is three now.

Q And the other one was younger?

A Two.

Q And when this conversation took place, those two children were in the bedroom with you?

A I dmn't think so.

Q Do you know where they were?

A Probably---see, like the apartment is small, and in my living room, I have it fixed up into a bedroom for the kids.

Q Were they awake at the time?

A I don't remember.

Q You don't remember whether they were awake or asleep. Now this was about 8:00 o'clock in the morning; correct?

A I think they were awake but I am not sure because they are in the living room.

Q Were they talking or eating or doing something at the time?

A Probably just playing.

Q Making noise?

A Not too much noise.

Q Your older two children had already gone to school?

A Yes.

Q Now in your Grand Jury testimony, you testified that--excuse me. I withdraw that question.

Mrs. Armster, do I read correct from your Grand Jury testimony, beginning at page 100, line 16, if you will read along with me. "Question---" this was a question by Mr. Welch. Do you recall he examined you at the Grand Jury, the same gentleman sitting at the table now?

A Yes.

Q This was a question by Mr. Welch:

"Q O.K. Prior to that time, prior to the time that he gave you the two one hundred dollar bills on September 12th, had you talked with Raymond about the bank robbery?

A I didn't talk with him about the bank robbery, but I did talk with him.

Q Did he tell you what he had been doing that day?

A No.

Q Did you know what he had been doing that day?

A No.

Q Did you talk with Raymond after he gave you the two one hundred dollar bills, about the bank robbery?

A No. that was the last I seen of him.

Q Did Raymond Jones ever tell you anything at all about the bank robbery?

A Earlier that morning, like my cousin, Dora, she lives with me, and that morning early Raymond came by the house, he and another guy, and it was Bobby Denson, and I had just gotten through getting the kids off to school, and we were sitting around in my bedroom because my apartment is one bedroom, and I use the living room as a bedroom for the kids, and we was in my bedroom and Raymond said, like, 'we are going to rob a bank', and we laughed at him and that is all.

Q Was Bobby Lee Denson in the same room when he said, 'we are going to rob a bank'?

A Yes.

Q And was anything else said about robbing a bank that morning?

A No."

Have I read that correctly, having seen that for the first time since you testified before the Grand Jury, you testified that Raymond Jones said, "we are going to rob a bank", and you said, "we laughed at him"?

A Yes.

Q Who laughed?

A Dora and I, my cousin Dora.

Q What about Bobby, did he laugh?

A I don't believe so. I don't know, because when he said it, like, we looked at him.

Q Looked at who?

A Raymond. And Bobby, like Bobby, he was kneeling on his knees, or sitting on a stool that I had, and he had lay his head down.

Q And you and Dora laughed at him?

A Yes.

Q Let me see if I am correct, Rosa Lee. Later that day Raymond came over and saw you, and that was the second time you saw Raymond that day; correct?

A Yes.

Q Am I also correct that that is the last time that you saw Raymond that day?

A No.

Q How many times did you see him?

A Three.

Q Three times?

A Yes.

Q Did there come a time when Raymond was in your presence and he was in the company of Kelvin Broadwater?

A Yes.

Q Do you also recall that in the same company was a fellow

by the name of Bobby Allen?

A There was another guy there, and I was confused about his name.

Q As a matter of fact, weren't there four people, Bobby Allen and somebody else's name you didn't know?

A Yes.

Q So Bobby Allen was there?

A This guy was there, I don't know if his name is Bobby Allen.

Q Did you testify at the grand jury, that Bobby Allen was there?

A I told him there was a Bobby Allen but I was not sure of his name.

Q And there were four people, Broadwater, Jones and Bobby Allen and one who you don't know?

A Yes.

Q And Bobby Denson was not there?

A No.

Q And was it at that time that you had seen the money?

A I had seen it before.

Q Who gave you the money?

A Raymond.

THE COURT: Was the money in currency?

THE WITNESS: Yes.

THE COURT: Bills?

THE WITNESS: Yes.

THE COURT: What denomination? Do you remember?

THE WITNESS: There was a lot of it. Like there was thirteen one hundred dollar bills.

THE COURT: Thirteen one hundred dollar bills?

THE WITNESS: Yes. And fifties and fives and ones.

BY MR. MICHAELS:

Q And Raymond gave you that money?

A Yes.

Q After Raymond gave you that money, did you put some of it in your bra?

A Like when Raymond came to the house he axed me to go with him.

Q Did he come alone the second time?

A Yes. He wanted me to do a favor.

Q And when you spoke with him was it just the two of you?

A Yes.

Q Go ahead.

A He axed me to go with him up to his house. At that time my brother was there, came in, his name is Billy, so he axed Billy to babysit for me, and Billy said, "O.K."

so we went outside and that is when we met Bobby and Kelvin and Raymold told them to stay there until he came back.

Q And then you and Raymond had a private conversion?

A Not really.

Q Did they stay there until he came back?

A We left them there. They went in the house.

Q Then you and Raymond had a conversion by yourselves?

A No, not really.

Q Then I am confused. When did Raymond give you the two hundred dollars?

A At his Aunt's house.

Q Was that before he gave you the rest of the money?

A No, he gave me the two hundred dollars like when I was at Lillie Mae's house.

Q Lillie Mae who?

A Brown.

Q When did he give you the thirteen one hundred dollar bills and this other currency?

A After we left my house, after Bobby and Kelvin went upstairs.

THE COURT: Bobby then went upstairs?

THE WITNESS: Right. We went down and got a ride to Raymond's mother. We went in the house. I was in the kitchen and Raymond

was upstairs. In a few minutes like Bobby and Kelvin came in and they were all upstairs.

THE COURT: Were they all there when he gave you the money?

THE WITNESS: No. No one was there but Kelvin.

THE COURT: Nobody was there but Kelvin?

THE WITNESS: Kelvin, Raymond's sister, and another girl.

THE COURT: Was Raymond there?

THE WITNESS: Yes.

THE COURT: So Kelvin and Raymond were there when he gave you the money?

THE WITNESS: Right.

THE COURT: And not Bobby?

THE WITNESS: No, Bobby was gone.

BY MR. MICHAELS:

Q Which money did you get first, the one with the thirteen hundred dollar bills or the two hundred dollars?

A The money will all the hundred dollar bills.

Q And that was the money that you put in your bra?

A Yes.

Q And later you put it in the closet?

A Yes, I put it in the closet.

Q And then later, the third time that day, you saw Raymond

and he gave you the two hundred dollars?

A Later that day Raymond came back to the house and gave me the money.

Q And he was alone at that time?

A No, Kelvin was with him and my cousin Dora.

Q There was a lady here this morning. Do you know who that lady was that sat down when you testified?

A That came in?

Q Yes, she was sitting in the corner. Was that Dora?

A No.

Q Who is that?

A My cousin Emma.

Q And now Raymond came back and then you gave him this paper bag with the money he had given you earlier?

A Yes.

Q And then when you gave him that money, he gave you the two hundred dollars?

A No.

Q Under what circumstances did he give you the two hundred dollars?

A He said he was going to leave my house because he didn't want me to have any trouble. He asked Lillie Mae if he could go to her house and she said, "alright". At that time I went to the store and when I got back Raymond, Kelvin and Dora and these other two persons

were there. Right after I got back there, about five minutes, they left. Raymond and Dora went to Lillie Mae's house. Kelvin, I don't know where he went, and the other guys left. Ten or fifteen minutes later, Raymond's mother came and asked where was Raymond. I took her across the street where he was, that was in Lillie Mae's bedroom and he told his mother to take him home, and then as they were leaving, he gave me the two hundred dollar bills.

Q When you said, in your testimony, that Raymond said, "we are going to rob a bank",--now make sure, this is a serious case, are you testifying that those are the exact words that he used?

A I guess.

Q You could not be mistaken? He couldn't have said "I am going to rob a bank"?

A I don't know exactly what he said now, because I forget. There was that time when I had---

Q In other words-- I beg your pardon, did you want to finish?

A I said from the time the bank was robbed, I have forgot. I am not sure what he said, but at the time I was at the grand jury I had remembered, so I guess that is what he said.

Q The grand jury was when, in November?

A I have forgotten. I am not good on dates.

MR. MICHAELS: When was it, Mr. Welch?

MR. WELCH: November 8th.

BY MR. MICHAELS:

Q Mr. Welch tells me your testimony was taken at the grand jury about November 8th. Would that refresh your recollection?

A Not really.

Q Does it seem right that it was early in November when you went to testify?

A Yes.

Q Does it seem right that it was about two months after this incident that you testified at the grand jury?

A Yes.

Q All right. And again I ask you, are you absolutely positive that those were his words?

MR. WELCH: I think the witness has answered.

MR. MICHAELS: I don't think she had. I think she indicated she was confused. I think I have the right to proceed on this further.

THE COURT: All right. I will let her answer. Answer yes or not. Are you absolutely positive that he said, "we are going to rob a

bank"?

THE WITNESS: No.

MR. MICHAELS: O.K.

THE COURT: What is your best recollection. Is it your best recollection that is what he said?

THE WITNESS: Yes.

BY MR. MICHAELS:

Q Now you weren't sitting there taking notes?

A No.

Q As a matter of fact there are a number of things that even on November 8th, when you testified in the grand jury, there were a number of things on that day that you couldn't remember; isn't that correct?

A I don't think so.

Q Don't you recall when you were asked what he was wearing that day when he had this conversation with you, and you couldn't remember?

A No, I could remember what he was wearing.

Q Could you remember what Raymond had been wearing that morning?

A Not that morning.

Q But it is a fact that you remember specifically this conversation but you can't remember what he was wearing; is that correct?

A Right.

Q You don't recall whether he was wearing a sweater, shirt or cap or what?

A No.

Q Or if he was wearing something, whether it would be green or red or yellow?

A No.

Q That would be easy to remember but you don't remember, do you?

A No.

Q And now Rosa Lee, am I correct that before you testified before the grand jury in connection with this case, you retained an attorney?

A What do you mean?

Q Didn't you have a lawyer represent you before you testified before the grand jury in this case?

A Yes.

Q And who was your lawyer?

A Paul Germain.

Q And wasn't the reason you had this lawyer was due to the fact---

MR. WELCH: Objection, Your Honor.

THE COURT: Overruled.

MR. MICHAELS: I have not completed the question yet.

THE COURT: No, but he anticipates it.

Finish your question.

Q Isn't it a fact that the reason you had a lawyer is because you had already been charged by the Syracuse Police Department with receiving stolen property?

A Professional stolen property.

Q Right. And what happened to that case?

A It was postponed until June 6th.

Q Of 1974?

A Of 1974.

Q And isn't it a fact that the first thing that happened when you testified before the grand jury, Mr. Welch, said, do you recall, "I talked to your lawyer." In fact, isn't this the very first thing that was said after you were introduced, beginning at page 97, of Exhibit 3509, at line 18, question by Mr. Welch:

"Q On September 12th, 1973--".

I beg your pardon. Let me back up to line 12:

"Rosa Lee, there are some things that I want to talk to you about in front of the ladies and gentlemen of the grand jury before we start asking you any questions. Are you aware of what this grand jury is investigating?

A Yes, the bank robbery.

Q On September 12th, 1973 in Syracuse, New York. Now, before you came in to testify today, either today or yesterday, did you have a chance to talk with an attorney who represents you?

A Yes.

Q O.K. And he told you that he and I spoke, is that correct?

A Right.

Q And that we agreed, your attorney and I, we agreed that this grand jury or the United States Attorney's Office was not interested in prosecuting anybody for receiving the money from that bank robbery. Is that correct?

A Right.

Q And we are going to ask you about that money, and where you got it, but you are not going to be prosecuted for getting any of that money, is that correct? Is that your understanding?

A Right.

Q And now in regard to that bank robbery, it is my understanding, and it is the grand

jury's understanding that you did, in fact, receive some money from that bank robbery, is that correct?

A Yes.

Q How much money did you receive?

A Two hundred dollars.

Q Two hundred dollars? From whom did you receive that money?

A Raymond Jones."

Did I read that correctly?

A Yes.

Q So that you testified before the Grand Jury you and your lawyer, you made a deal with the government----

A Correct.

Q And if you cooperated you wouldn't be prosecuted, correct?

A I guess so.

Q Even though you apparently committed a crime, correct?

A I had committed a crime?

Q Yes, even though you knew there was going to be a bank robbery and had taken the money from the bank robbery and kept it.

A I didn't know there was going to be a bank robbery.

Q In other words, it was a big joke when Raymond told you?

A Yes. We laughed about it.

Q And two months later your best recollection under immunity, you suddenly remembered the exact words?

MR. WELCH: Objection, Your Honor. The question is argumentative.

THE COURT: Sustained.

BY MR. MICHAELS:

Q Who is Bojack?

A I have no idea.

Q Was there somebody by the name of Bojack at your house?

A Not that I know, unless it was one of the two guys who was at the house that I didn't know.

Q In other words, that might be the nickname for the other fellow?

A Right.

Q As far as you were concerned, Rosa Lee, when you received money on the 12th of September from Raymond Jones, as far as you were concerned this was his money. It didn't belong to anybody else. It was his money?

A I guess so.

Q In fact your grand jury testimony reflects that on several occasions you said to Raymond, I wanted him to get his money out of my apartment?

A He is the one who gave it to me.

Q You didn't say "their money", you said, "his money",

correct?

A Yes.

Q And of course Raymond has already pled guilty to this bank robbery, hasn't he?

A I don't know.

THE COURT: Did you ever count the money that you put in the bag?

THE WITNESS: No, but when Raymond came back to the house the second time---the third time, he put it on the bed, and he had the money in his hands and he counted like thirteen one hundred dollar bills.

THE COURT: And there were other bills, you told me?

THE WITNESS: Yes, there was a lot of money. Fifties, tens.

BY MR. MICHAELS:

Q Now in connection with these charges which you say have been postponed in the City Court of Syracuse,---is that in the City Court of Syracuse or the County Court?

A I don't know.

Q Well are you still represented by a lawyer in connection with those charges?

A Yes.

Q And still by Mr. Germain?

A Right.

Q What arrangements have you made with the Syracuse Police Department or the Onondaga County District Attorney's Office about your testimony? Are they going to drop them if you cooperate?

A They didn't tell me about dropping them.

Q But they postponed this case for a whole year?

A When I went there the last time they just told me it was postponed until June 6th, and for me to stay out of trouble.

Q Rosa Lee, do you recall being at the Public Safety Building, Syracuse, New York, on the 26th of September, 1973, this being the day when a preliminary hearing was had in connection with this case?

A With this case?

Q Yes?

A For who?

Q Well with all of them, with Denson, Jones and Broadwater?

A Upstairs?

Q Yes. Do you remember there was a hearing upstairs that day?

A Yes.

Q You didn't go to the hearing, did you?

A I had to be downstairs I think for Court. Anyway, after it was over my cousin Dora asked me to go up there with

her, and I went up there for awhile and then left.

Q But you recall that you were asked at one time--withdrawn. How did the police or the F.B.I. first learn of your involvement in this case? Did somebody come to you or you go to the police?

A The police came to me.

Q Didn't you go asking about a reward?

A No.

Q You never did?

A No.

Q Now before you testified before the grand jury under questioning by Mr. Welch, did Mr. Welch ever personally meet you and discuss this case with you?

A I beg your pardon?

Q You testified on November 8th before the grand jury?

A Right.

Q I think we are correct on that. Before you went into the grand jury, did you ever meet with Mr. Welch, the gentleman at this table?

A Not that I recall.

Q You ever meet with any of the other United States Attorneys?

A No.

Q Did you ever meet with any of the Onondaga County District Attorney's Office?

A No.

Q Did you ever meet with any other men of the F.B.I?

A There was a couple of F.B.I. men came to my house and asked me to come down to their office.

Q To talk to them at their office?

A No.

Q You talk to any of the detectives of the Syracuse Police Department?

A No.

Q So basically what you are telling us is that you went into the grand jury two months after this incident, you pretty much went in cold. In other words, you have not gone through this many times before?

A No.

Q And you did tell the grand jury, did you not that the reason you were giving them the answers you were, and the reason you were answering Mr. Welch's questions was because you didn't want to get in trouble?

A I said that I didn't want to get into any more trouble than I had.

Q How about the past? How about trouble in relation to this case?

A What do you mean?

Q Did you tell the grand jury that you didn't want to get in trouble?

A I probably told them that. I didn't want to get in trouble. I was just telling them what I knew. They asked me what I knew.

Q Let's see if this is right. Do you remember on page 112, line 10, the question was:

"Q O.K. You won't get anybody in trouble if you answer, you know, because we went to find out if anybody can tell us.

A I will tell you everything I know because I don't want to get in trouble."

Is that correct?

A Yes.

Q I can't understand how or when Mr. Welch told you, but he gave you the question right there in the grand jury and said, "you tell us what you know and nobody will get in trouble." Is that what he told you? That if you said what you knew about other people, you won't get in trouble?

A If that is what is down there.

Q After you were told by the U.S. Attorney if you testified about these people that nobody would get in trouble, were you surprised a few days later to find out that the three of them had been indicted?

A Not actually.

MR. MICHAELS: Thank you.

RE-DIRECT EXAMINATION

BY MR. WELCH:

Q Rosa Lee, would you, if you know, tell us the relationship of Dora Mae Bolden and Raymond Jones?

A At the time that was his girlfriend.

MR. WELCH: No further questions. Thank you, Your Honor.

MR. MICHAELS: Thank you ma'am.

THE COURT: The witness is excused.

(Witness excused).

MR. WELCH: United States calls Frank Sardino.

F R A N K S A R D I N O,

called as a witness in behalf of the Government, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. WELCH:

Q Now, Mr. Sardino keeping your voice up good and loud so everyone can hear you, will you tell the ladies and gentlemen how you are employed?

A City of Syracuse, Department of the Police.

Q Were you so employed on September 1973?

A I was.

Q And in September 1973, what were your duties in the City

of Syracuse in the Department of Police?

A I was assigned as an investigator with the Criminal Investigation Bureau.

Q Would it be fair to say part of your duties was to investigate bank robberies?

A Yes.

Q I would like to direct your attention specifically to September 12, 1973. Well, let me ask you this. Do you remember a bank robbery in the City of Syracuse in the month of September, 1973? Would you know about that?

A Yes.

MR. MICHAELS: Objection.

THE COURT: I will allow it.

Q I didn't hear your answer?

A Yes.

Q Tell the ladies and gentlemen of the jury how many bank robberies there were in the month of September, 1973 in the City of Syracuse?

A One.

Q Where was that bank robbery?

A That was at the corner of Lexington and Cherry Streets, the First Trust Bank.

Q Do you know if there were any other bank robberies in the City of Syracuse between September and November, 1973?

A To my knowledge, there were none.

Q Directing your attention to September 12, 1973, were you present when Mr. Raymond Jones was arrested for bank robbery that night?

A Yes.

Q On that day did you have occasion to talk to Mr. Raymond Jones?

A Yes.

Q And on that day, September 12, 1973, did he tell you who else was involved with him in the bank robbery on September 12th, the day he was arrested?

A He mentioned the name of another fellow.

Q Did he mention the name of Bobby Lee Denson?

A No.

Q Did he mention the name of Kelvin Broadwater?

A Yes.

Q Directing your attention to September 14, 1973, did you have occasion to interview Raymond Jones that day?

A Yes.

Q And on that day did he mention the names of any other bank robbers with him?

A Yes.

Q Tell us exactly what he told you and how it came about?

A We were engaged in a conversation in the Squad Room of the Criminal Investigation Division.

Q Who is the "we" you are referring to?

A Raymond Jones, myself, Investigator Andrew Mrozienski, Investigator Richard Walsh and several other officers.

Q And this squad room, can you describe that to the ladies and gentlemen of the jury?

A It is a large room used by the investigators to write the reports.

Q Were there more people than just the people you mentioned to us in that room on that day?

A Yes.

Q Did you have a conversation with Mr. Raymond Jones, you started to say, and I asked you to tell us about his relating the bank robbers to you. Continue please.

A We were sitting in the squad room and Raymond Jones was using the phone periodically to contact his mother in an arrangement, trying to make arrangements to get back part of the money that was stolen. Between the phone conversations we were discussing the bank robbery with him, and he did mention the name of Kelvin Broadwater being involved, and at one point he mentioned the name of Bobby as the other person involved.

Q Did he give you the last name with the name of Bobby?

A Yes.

Q And what was the name?

A Denson.

Q Did he tell you anything about Bobby Denson's involvement in the bank robbery?

A Yes. I showed him a photograph taken from the bank, the surveillance photo---

MR. WELCH: May I approach the witness, Your Honor?

THE COURT: Yes.

BY MR. WELCH:

Q Mr. Sardino, I hand you what has been marked in evidence as Exhibit Number 8. Is that the photo that you showed to Mr. Jones that day?

A Yes.

Q Continue with what you were telling us.

MR. MICHAELS: What exhibit was that?

MR. WELCH: Eight.

A I showed this photo to Raymond Jones and I said to him, "Would you point out which person was which." I just wanted to see if I was right, and Raymond Jones pointed out, "this is me."

Q Well if you would please, Mr. Sardino, will you take and put a "J" underneath the man that he said, "this is me".

MR. MICHAELS: Your Honor, may I interpose an objection if the Court please. If I understood his testimony, he said this conversation took place on September 14, 1973.

THE COURT: Please state your objection.

MR. MICHAELS: My objection is I would like to take this witness on voir dire. I believe Mr. Jones had already contacted an attorney and any admissions made by him would be improper at that time.

THE COURT: Overruled.

BY MR. WELCH:

Q Alright, proceed. I asked you to put a "J" underneath the person he said was himself, Raymond Jones.

(Witness marks)

Q Did he make any other comment about that photograph as to who was who?

A Yes, he pointed out the name of---he pointed out Kelvin Broadwater.

Q Would you put a "B" underneath the man that he pointed out as Kelvin Broadwater.

(Witness marks)

Q Proceed with your answer.

A And then he said, "This is Bobby Denson behind the counter."

Q Would you put a "D" underneath that someplace where it will show.

(Witness marks)

THE COURT: I want to instruct the jury

that this testimony can't be received or considered by you as any admission by the defendant that he was present at that robbery. These statements were made by Jones after he had been arrested and therefore after this crime had been committed and any statements made by one of the co-defendant's or joint participants in a crime are not binding on any person who was absent during these conversations, and there is no showing here that this defendant, Denson, was present during these conversations. So they are not binding on this defendant and you may not consider them in determining the guilt or innocence of the defendant Denson. You may consider them, however, on the question of whether or not you believe Broadwater and Jones in their answer to the questions put to them whether Denson was the man present. In short, they are received here solely on the questions of the plausibility, the credibility of Broadwater and Jones.

MR. WELCH: Thank you, Your Honor, for the instruction.

BY MR. WELCH:

Q All right, now this is Mr. Jones speaking to you and describing who was who in that picture. He say anything else to you that day that you recall about the bank robbery?

A Well, he was talking casually about the whole incident, and I don't recall exactly what he did say except to point out the picture and said, "this is Denson on the other side of the counter." He said he was there, he was over on the other side of the counter where the money was.

THE COURT: I am in error. You can't consider this on the credibility of Broadwater's testimony, only Jones' testimony.

MR. WELCH: Thank you, Your Honor. I have no further questions.

CROSS-EXAMINATION

BY MR. MICHAELS:

Q Mr. Sardino, you are, I believe you said, an investigator with the C.I.D., Syracuse Police Department?

A That is correct.

Q And an investigation was made, correct? In fact, charges were made in the Syracuse Court System as well as the Federal Court System; isn't that right?

A What are you talking about?

Q You know that charges were made; you know there was a

hearing before Judge Burke in the City Court, wasn't there? A charge made in Syracuse?

A There was a charge placed against the defendant.

Q Yes.

A That's right.

Q A charge of robbery, then the State authorities bowed to the federal?

A I don't know about that.

Q There is no case pending over there now?

A I have no knowledge of that.

Q And as an investigator, you are a plain clothes investigator?

A Yes.

Q And you make records of what you do?

A Yes.

Q Have you brought your records of these conversations to Court today?

A No.

MR. MICHAELS: I object then, based on the arrangements---

THE COURT: Don't make any comments. Make a motion.

MR. MICHAELS: Move to strike out all his testimony.

THE COURT: Have you got all your records

here?

THE WITNESS: No.

MR. MICHAELS: I reserve the right to cross-examine.

THE COURT: Yes.

MR. WELCH: I have no further questions.

THE COURT: Return Tuesday morning with any records or notes that you made of conversations with Jones.

MR. WELCH: May we approach the Bench, Your Honor?

THE COURT: Surely.

(The following discussion took place at the Bench outside the hearing of the jury).

MR. WELCH: If Your Honor please, the next witness was to be Mr. Richard Walsh, another investigator from the Syracuse Police Department with similar testimony about what Jones said, in order to impeach Jones' testimony at this trial. However, I am not certain if he has his records with him.

THE COURT: I would have thought you would have told him to bring his records. My God. Well, we will take his testimony and have him come back Tuesday with his records,

and have Mr. Michaels see the records. Mr. Michaels, not necessarily all his records but the records of his conversations with Jones and any Jenks Act material is what it would be, and show it to Mr. Michaels and if Mr. Michaels wants to further cross-examine on those records, he can do so.

MR. WELCH: I did not instruct them to bring records with them.

THE COURT: That doesn't surprise me.

MR. WELCH: It wasn't my understanding that they were covered by Jenks Act. They are not government records.

THE COURT: Any prior statements of a witness to be used for impeachment, the Jenks Act principle is involved.

MR. MICHAELS: I have another problem, Your Honor. He spoke about another witness. There is a witness by the name of Andrew Mrozienski. Mr. Mrozienski was subpoenaed by the United States Government to testify. Now I understand he will not be called. I am being placed in a difficult position.

THE COURT: If you want the witness, we will bring him.

MR. MICHAELS: But he had facts and I am then in the position of vouching for his credibility.

THE COURT: If you want the witness, we will call him.

MR. MICHAELS: I want the witness back here on Tuesday before the jury.

(The following took place in open Court before the jury).

MR. WELCH: The United States calls Richard Walsh.

R I C H A R D W A L S H,

called as a witness in behalf of the Government, being first duly sworn, was examined and testified as follows:

THE COURT: I would say to the jury my instruction with respect to the last witness on the basis of what counsel at the Bench, also applies to this witness. Proceed.

DIRECT EXAMINATION

BY MR. WELCH:

Q Mr. Walsh, how are you employed?

A I am a policeman for the City of Syracuse.

Q As part of your duties, is it to investigate bank robberies?

A Yes, it is.

Q Were you so employed on September 1973?

A Yes, sir.

Q In the course of your employment, specifically on September 14, 1973, you have occasion to interview or talk with a Mr. Raymond Jones concerning a bank robbery on September 12th, 1973?

A Yes sir, I had.

Q Tell us where that interview took place?

A It took place in the Squad Room on the Criminal Investigation Division.

Q About what time of day was that?

A I would say it was approximately 11:00 o'clock that evening.

Q Did the interview run into September 15th or did it conclude on September 14th?

A I think it did run past midnight.

Q In talking to Mr. Jones, did he indicate anything concerning a Robert Lee Denson to you?

A Yes sir, he did.

Q Tell the ladies and gentlemen of the jury what he indicated?

A Yes, sir. I had asked Mr. Jones where he had been previously, on the morning of the 12th of September. Mr. Jones related to me he had been with Bobby Denson

to visit his sister--excuse me--had gone to visit Jones' girlfriend, Dora.

Q He give you the last name of that Dora?

A Dora Bolden.

MR. WELCH: I have no further questions. Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. MICHAELS:

Q Is the practice of your Department, after you--- withdrawn. Are you a C.I.D. investigator, plain clothes?

A Yes.

Q Is it the practice after you interview a witness or prisoner then to make out an affidavit?

A Not in all cases, no.

Q Were any placed in the investigators' file?

A Not by me.

Q Were any affidavits put in by anybody else?

A In regards to this interview?

Q Or any other interview with Mr. Jones?

A Not to my knowledge.

Q Did you look at the files today?

A Yes.

Q You say there is no affidavit of anybody concerning Mr. Jones; is that right?

A Not that I can recall seeing it.

Q If you saw one it would be there?

THE COURT: Did you make any notes of any conversation you had with Jones?

THE WITNESS: No, sir.

MR. MICHAELS: May I have this marked?

(Paper marked as Defendant's Exhibit C for identification).

THE COURT: Was a stenographer present when you had this conversation with Jones?

THE WITNESS: No.

THE COURT: Did anybody else make any notes of your conversation with Mr. Jones, as far as you could see?

THE WITNESS: No, sir.

THE COURT: Was anybody else present?

THE WITNESS: There were numerous other people in the room.

BY MR. MICHAELS:

Q Now are those notes in the file in this case?

A They may be.

Q Well what is in that file? That is what I want to know before Tuesday. I want to know what is in there if you know?

A Copies of police reports, copies of affidavits.

Q Affidavits from police officers?

A Affidavits of police officers and Jones.

Q Is there an affidavit from Officer Mzrozienski?

A I believe there may be.

Q How do you spell that?

A M-R-O-Z-I-E-N-S-K-I.

Q That is Andrew Mrozienski?

A Yes.

Q Is there an affidavit from him?

A There may be.

Q When is the last time you looked in that file?

A I glanced through it this morning. I didn't look through everything.

Q I show you Defendant's Exhibit C for identification. Was that affidavit in the file?

A I would assume it was.

Q Not assume, I don't want to know what you assume. I want to know what you know?

A I didn't see it this morning.

Q Is Mr. Mrozienski here today?

A Yes, he is.

Q Has he got his records with him?

A I don't know.

Q Did you come down with him today?

THE COURT: That is immaterial.

Q Have you discussed anything with him pertaining to his

records?

A No.

MR. MICHAELS: O.K.

THE COURT: We will take a short recess.

MR. MICHAELS: I don't believe he needs to come back if he has no records.

THE COURT: All right, if he has no records he doesn't have to come back unless the Court further rules.

All right, we will take a short recess.

(At this point a recess was taken after which the trial was resumed).

THE COURT: Have you run out of witnesses?

MR. WELCH: Yes, there was a witness from Detroit, Michigan, who can't arrive until Tuesday.

THE COURT: All right, call the jury in.

(At this point the jury was returned to the Courtroom).

THE COURT: We have run out of witnesses so we will recess now until, adjourn now until Tuesday morning at 10:30. Don't talk about the case; don't let anybody talk to you about it. Have a nice weekend. Tuesday morning at 10:30.

THE JURORS: Thank you.

(At this point the jury retired from the Courtroom).

THE COURT: Just so I can make some estimate here, when do you expect to end?

MR. WELCH: I expect to rest on Tuesday.

THE COURT: When?

MR. WELCH: Probably at the end of the morning.

THE COURT: You will take the entire morning?

MR. WELCH: I have two witnesses, Your Honor, yes.

THE COURT: What about you, Mr. Michaels? Will there be a defense?

MR. MICHAELS: Mr. Mrozienski is going to be called and the determination has not been formally made on whether he will take the stand.

THE COURT: When you say two witnesses, are those two witnesses plus Mr. Sardino?

MR. WELCH: Yes, Your Honor. I am sorry. Mr. Sardino and Mr. Mrozienski. So it will be four.

THE COURT: There will be four witnesses.

MR. WELCH: I am not certain about calling Mr. Mrozienski. Mr. Sardino will be here for cross-examination. Over the weekend I will have to look at the statements.

THE COURT: So it looks like we will be going to the jury on Wednesday?

MR. MICHAELS: If the case goes that far, it will be Tuesday night.

THE COURT: I dislike charging the jury late at night, but we will go as far as we can go on Tuesday.

MR. WELCH: If Your Honor please, my secretary was typing up two additional requests to charge.

THE COURT: What are they?

MR. WELCH: The charge about if a witness lied about a material fact you can disregard his entire testimony.

THE COURT: Save her the trouble. I will do that. What else?

MR. WELCH: The second has to do with a number of witnesses is never controlling in a case.

THE COURT: Save your breath on that. Give your secretary a rest.

MR. MICHAELS: As long as this came up, I didn't realize that they were given to you, may I make an objection to some of the proposed requests Mr. Welch gave you?

THE COURT: Maybe you better show it to me. Have you any instructions?

MR. MICHAELS: Yes, Your Honor. I can either give you---

THE COURT: I will rule on his instructions as to whether I will do it. Do you have a copy of your requests?

MR. WELCH: Yes, Your Honor.

THE COURT: Let me rule on his.

MR. MICHAELS: I can give you some sort of an outline---

THE COURT: I don't need an outline. I want to know if you have any requests to charge?

MR. MICHAELS: Nothing specific at this time.

THE COURT: I will charge the substance of one but not in that form.

I will give the substance of two. In substantially that form but not exactly.

I will give the substance of three. In

substantially that form.

I will give the substance of four.

I will charge on aiding and abetting, but not instruction five. I will give them a more elaborate instruction in that. At the moment I would decline as not applicable.

MR. WELCH: We withdraw number six and number seven, Your Honor.

THE COURT: All right.

MR. MICHAELS: May I be heard in connection with one?

THE COURT: Yes. Which one?

MR. MICHAELS: I have some notes. If you give me a second I will try to find my notes that I made last night.

Your Honor on instruction No. 3 reference is made to the name Mr. House. Mr. House didn't testify. I don't think his name should be included in that charge.

THE COURT: I don't see why not. The testimony of Mrs. Tellerico was that the three of them were there.

MR. MICHAELS: I also object to the second paragraph, to the second sentence beginning with the words "In this case" be-

cause I believe Mr. Welch and I have discussed this matter and he has acknowledged to me and it is verified by the transcript at the plea of Mr. Broadwater that Mr. Broadwater said before Judge Port that this gun was not loaded.

THE COURT: There is no evidence before me that it was not loaded.

MR. MICHAELS: I think even Mr. Welch felt that that part shouldn't be included in the charge. Maybe I misunderstood you.

THE COURT: There is no evidence before me, is there, as to whether the gun was loaded or unloaded, at this point. Is there?

MR. MICHAELS: That is correct.

THE COURT: I have to act on the basis of the evidence before me. Now if Mr. Welsh knows of something that would be favorable to the defense, it is up to him to say. How about it, is there information that you have not told the Court?

MR. WELCH: That is what I was attempting to say. Mr. Sardino in response to my questions today, "Was there anything else said about the bank robbery" did not answer the question. But apparently he told you last night that Mr. Jones

indicated Mr. Broadwater was likewise stupid because he kept clicking the gun before the tellers there. What Mr. Broadwater said at the plea is the only knowledge that we had of whether the gun was loaded. But that is not in evidence at this trial.

THE COURT: Do you wish to put it in evidence?

MR. MICHAELS: I guess I will be able to because Mr. Sardino is coming back on Tuesday.

THE COURT: What Mr. Sardino says is hearsay. It is what Mr. Broadwater said.

MR. MICHAELS: Perhaps Mr. Welch will enter into a stipulation before the Court passes on the statement made by Mr. Broadwater to Judge Port, that the gun was not loaded. Perhaps he would be agreeable to a stipulation and he would not need to be brought back.

MR. WELCH: I would agree to the stipulation that if called he would say ---

THE COURT: That the gun was not loaded?

MR. WELCH: Yes, Your Honor.

THE COURT: Was he questioned as to whether he had any ammunition in his pocket?

MR. WELCH: To my recollection, no.

THE COURT: Does it have to be loaded to put people's lives in jeopardy?

MR. WELCH: I think in United States versus Marshall ---

THE COURT: I read that case, but that I wouldn't think is a nut of wisdom.

MR. WELCH: It is my understanding that it has to be a potential state of lives in jeopardy.

THE COURT: What do you mean "potential state"?

MR. WELCH: That he is capable of carrying out some harm to these people.

THE COURT: Could he have loaded the gun?

MR. WELCH: Yes, Your Honor, I am sure he could.

THE COURT: I would like some research between now and Tuesday as to whether it is a dangerous condition assuming it is unloaded and whether you threaten people with an unloaded gun is sufficient to satisfy -- you put their life in jeopardy and harm.

MR. WELCH: Very well, Your Honor, I will have something for you Tuesday morning. May I also note ---

THE COURT: But you will stipulate that

Broadwater would testify that the gun was unloaded?

MR. WELCH: Yes, Your Honor.

THE COURT: I suppose you could withdrew the count. It doesn't make that much difference.

MR. WELCH: We could withdrew the second count. I have not had a chance to read my notes of what he said.

THE COURT: You know about this charge. You had months to prepare this and now you come up with this in your case. Didn't you have either of those witnesses, Broadwater or Jones, before the grand Jury?

MR. WELCH: No, Your Honor. The grand jury investigated them as well as the defendant Denson. They only pleaded guilty on January 28th. It was my assumption that they would be tried.

THE COURT: Did they offer to testify?

THE WITNESS: At one point there was some discussion of it and the attorneys went back to their clients and they refused.

MR. MICHAELS: May I note an objection to proposed instruction No. 4. I believe that that proposed instruction is wrong. He specifies

in there that although the indictment doesn't explicitly ----

THE COURT: That is not wrong. That is completely right. You are going to say that he doesn't show aiding and abetting.

MR. MICHAELS: That is correct.

THE COURT: If you say that, then you are wrong.

MR. MICHAELS: I was going to object to proposed No. 5. You said you were going --not to do it in that form so I will withdrew my objection to that. I do object to the form of it.

THE COURT: All right.

MR. MICHAELS: And I will have mine to you on Tuesday.

THE COURT: What do you intend to ask?

MR. MICHAELS: I am going to ask for a charge that the jury has it within its power as a question of fact to determine that Mr. Denson might or might not have been an accomplice, and if so that they be guided accordingly in accordance with the accomplices testimony.

THE COURT: I will give them the charge on accomplices.

MR. MICHAELS: Do you still want me to submit the written charge?

THE COURT: Maybe I will save you the trouble. What else?

MR. MICHAELS: I am also going to ask for an instruction, repeating what you said in the instructions this afternoon that the testimony of those witnesses, in relation to the testimony which was strictly for impeachment purposes is not binding on the defendant and just goes to the credibility of the witnesses.

THE COURT: Give me a written charge, in the language that you want.

MR. MICHAELS: I assume you probably have this in mind, but I am going to ask for a charge in connection with circumstantial evidence; that the defendant --- obviously there is no inference from circumstantial evidence.

THE COURT: I will not grant that. That is not the rule. Read United States against Ott, Supreme Court. You may draw two inferences. If they don't carry the burden of proof then the government has failed.

MR. MICHAELS: I was not going to propose it in that form, not exactly. That the govern-

ment has failed to met its burden and the jury was entitled to have or take the inference of innocence rather than the inference of guilt.

THE COURT: No. Read that case.

MR. MICHAELS: Also, I think Mr. Welch mentioned the rule if a witness has testified falsely to one fact --- I think you were going to grant that anyway.

THE COURT: Yes.

MR. MICHAELS: And I expect everything else I have on my list is routine in criminal cases.

THE COURT: I will give all the routine charges. You listen carefully and if I make a mistake correct me.

MR. MICHAELS: Those are the only specific ones, the ones I mentioned.

Thank you very much.

MR. WELCH: Thank you, Your Honor.

THE COURT: The only one I want you to check yourself against the case which I have not read, which is the one on the instruction which you want me to repeat. You may as well give one of those to Mr. Welch. I had to give you my rulings this afternoon so you would know what I would charge and what I would not.

All right. Stand in recess.

THE CLERK: Court stands in recess until ten thirty Tuesday.

(Whereupon at 3.45 p.m. an adjournment was taken to Tuesday, February 19th, 1974, at ten thirty o'clock a.m.)

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,	:	
-against-	:	73-CR-194
ROBERT LEE DENSON, JR.,	:	
Defendant.	:	

The trial in the above-entitled matter was continued, pursuant to adjournment, at the United States District Court held in and for the Northern District of New York, at Utica, New York, on February 19, 1974, at 10:30 A.M., before HONORABLE LLOYD F. MacMAHON, United States District Judge sitting by designation, and a Jury.

* * * * *

(The following took place outside the presence of the jury).

THE COURT: Mr. Michaels I have marked your requests to charge. My rulings are in the margins of your request. When you have seen what they are, will you hand them to Mr. Evans, so that they will form a part of the record.

MR. MICHAELS: Yes, sir.

THE COURT: Call in the jury.

(At this point the jury was returned to the Courtroom).

THE COURT: Good morning.

THE JURORS: Good morning.

THE COURT: All right, proceed.

F R A N K S A R D I N O,

having previously been sworn, resuming the stand, testified further as follows:

CROSS-EXAMINATION (Continuing)

BY MR. MICHAELS:

Q Mr. Sardino, when we broke off on Friday, I believe I had requested that you bring with you the records concerning this conversation with Mr. Jones; is that correct?

A Yes.

Q Can you produce those records now please. Does Mr. Welch have them or do you have them?

A Mr. Welch.

Q These have previously been marked as exhibits 3511, 3512 and 3513; is that correct, Mr. Sardino? Maybe you have not seen the numbers. Will you verify that please?

A That is correct.

Q If I am correct then these are the records that you have produced which deal with your conversations with Mr. Jones in which, as you said on direct examination, he implicated Mr. Denson; is that correct?

A Correct.

Q Mr. Sardino, the other day you used a photograph, I am not sure what number it was--Mr. Welch probably has it if you want it.

(Photograph handed to Mr. Michaels by the Court Clerk).

Q You used Exhibit 8. Is that the one that you used the other day?

A Yes, sir.

Q It appears to have some notations on it; is that right?

A Yes.

Q When you went back to Syracuse this weekend, did you bring your records concerning the conversation with Mr.

Jones; was there any photograph in the file?

A No.

Q What happened to the photograph that was in the file?

A Which one are you talking about?

Q The one you said you referred or pointed out the people on it?

A I don't know what happened to it.

MR. MICHAELS: I offer 3512, 3513---

I better lay more foundation.

Q Exhibits 3511, 3512 and 3513, these are copies of original documents, are they not?

A Yes.

Q And this document, what do you call them? What is the term that you use to describe these documents?

A Supplemtary reports.

Q Are these reports made in the regular course of business of the Syracuse Police Department, Criminal Investigation Division?

A Yes.

Q And maintained in the regular course of business of the Syracuse Police Department; correct?

A Yes.

MR. MICHAELS: May I have just a moment to look at them.

(Mr. Michaels peruses Exhibits 3511, 3512

and 3513).

MR. MICHAELS: I offer Exhibits 3511, 12 and 13 in evidence.

THE COURT: May I see them?

(Documents handed to the Court).

THE COURT: Received.

(Exhibits 3511, 3512 and 3513 received in evidence).

BY MR. MICHAELS:

Q Mr. Sardino, just a few additional questions. Going back to the conversation that you had with Mr. Jones on the 14th of September, do you also recall that he made a statement in which he referred factually to the stupidity of Kelvin Broadwater?

A Yes.

Q And do you recall that the substance of that statement was that Kelvin Broadwater was clicking the gun and nothing was coming out?

A Yes.

Q It has been three days and I have been trying to recall your testimony, but did you testify on direct examination when you had this conversation with Mr. Jones on the 14th of September, it was in the squad room?

A Yes.

Q Did you further testify that Detective Mrozienski was

there?

A Yes.

MR. MICHAELS: Thank you. I have no further questions.

MR. WELCH: Nothing further, Your Honor.

THE COURT: You are excused.

(Witness excused).

MR. WELCH: United States calls Dora Mae Bolden.

D O R A M A E B O L D E N,

called as a witness in behalf of the Government, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. WELCH:

Q Now Miss Bolden, when I ask you questions and you make answers to the questions, will you keep your voice up real loud so everybody here can hear you. Will you tell the ladies and gentlemen of the jury where you lived in September, 1973?

A 608 Midland Avenue.

Q Was that your house?

A No.

Q Whose house was it?

A My cousin, Rosa Lee Armster.

THE COURT: Was that in Syracuse?

THE WITNESS: Yes.

BY MR. WELCH:

Q Directing your attention to September 12, 1973, did you on September 12, 1973 know Raymond Jones?

A Yes.

Q Did you have occasion to see Raymond Jones that day?

A Yes.

Q Did you see Raymond Jones in the morning of that day?

A Yes.

Q Where did you see Raymond Jones?

A At 608 Midland Avenue.

Q Now what time was that?

A About 8:30.

Q Who else was present?

A Bobby Denson.

Q And anybody else?

A Rosa Lee Armster.

MR. WELCH: I have no further questions. Thank you, Your Honor.

MR. MICHAELS: You Honor, I have been previously given this morning a copy of Miss Bolden's testimony before the Grand Jury so I don't need a recess.

CROSS-EXAMINATION

BY MR. MICHAELS:

Q Miss Bolden, I show you what has been marked 3512. Have you ever seen that document before?

A No.

Q This has been identified to me as your testimony before the Grand Jury. You have not read that Grand Jury testimony before you came in; is that correct?

A No.

Q Dora, I refer to page 169 of your testimony, and ask you if the following questions were asked and did you give the following answers when you testified. Remember it was Mr. Welch, this gentleman (indicating) who examined you at the Grand Jury?

A Yes.

Q And that was probably in early November; is that correct?

A Yes.

Q And so beginning at line 5 of 169:

"Would you like me to call you Dora or Miss Bolden, or what?

A Dora.

Q O.K., Dora. The Grand Jury is investigating the alleged robbery of the Cherry and Lexington Branch of the First Trust and Deposit Company on September 12, 1973, and we would like you to tell us all that you know

about that robbery, and if I forget to ask you a question, and you think of something, you go right ahead and tell us, O.K?

A Yes.

Q Is Raymond Jones your boyfriend?

A He was at that time.

Q At that time?

A Yes.

Q And do you know whether or not he was involved in the bank robbery?

A I don't know for sure. Like that morning, before I went to school, like he said he was going to rob a bank, but I thought he was just joking and I laughed and went off to school."

Did I read that correctly and is that what you said under oath?

A Yes.

Q Then later on you said, the question at 170, line 8:

"O.K. And he said he was going to rob the bank?

A Yes."

And then the question:

"Was anybody else there when he said that to you?

A Bobby Denson.

Q And did Bobby Denson say anything about robbing a bank?

A No."

Is that correct?

A Yes.

Q (Reading) "Did you tell him it was a joke and he should be quiet?

A Before he left. They left and went on down the street."

Is that correct?

A Yes.

Q You recall later on in the day you saw Raymond again and he had some money with him?

A Yes.

Q By Raymond you mean Raymond Jones?

A Yes.

Q And are we talking about the same person?

A Yes.

Q And he had quite a bit of money with him?

A Yes.

Q Did he want to give you some money?

A He didn't say anything about giving me any money.

Q When you saw Raymond Jones later that day he was with some other people?

A Yes.

Q And one of them was Kag Broadwater?

A Yes.

Q That is with Kelvin Broadwater?

A Yes.

Q Were there some other people with him?

A Yes.

Q Let me first say, were there any other men with him?

A Yes.

Q How many besides Kelvin?

A Two.

Q Were either of those other two people Bobby Denson?

A No.

Q And were they white or black?

A Black.

MR. MICHAELS: I have no further questions.

MR. WELCH: Nothing further, Your Honor, thank you.

THE COURT: You are excused.

(Witness excused)

- - - - -

MR. WELCH: United States calls Randall Walker.

RANDALL WALKER

called as a witness in behalf of the Government being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. WELCH:

Q Mr. Walker please keep your voice up good and loud so everyone can hear you. Tell the ladies and gentlemen of the jury how you are employed?

A I am employed at Jack's Place, a men's clothing store in Detroit, Michigan.

Q What is the address?

A 191-88 Livinois.

Q Were you so employed in 1973?

A Yes, sir.

Q And tell me what was your, at that time, business procedure when a cash purchase was made in your store?

A Either write his name, write cash or leave it blank.

Q On what?

A On the cash slip.

Q If a man made a charge what would you write on the order?

A I would write it on a cash receipt and a charge.

Q Was the man's name on the cash receipt?

A It would be on the plate of the charge.

Q Mr. Walker I hand you what has been marked as Exhibit No. 11 and ask you if you have seen that before?

A Yes, I have.

Q And where have you seen that before?

A This is a cash receipt from my store, at Jack's Place.

Q Let me direct your attention to the top line where it says "Sold by".

A Sold by Randall. That is myself.

Q Is that prepared in the orddinary course of your business in a cash transaction?

A Yes.

Q What date was that cash transaction?

A It looks like I marked 9/12; then I wrote 9/14 over it.

Q Of what year?

A '73.

Q And what is the total cash amount paid?

A $306.00.

MR. MICHAELS: Objection. It is not in evidence yet.

THE COURT: Sustained.

MR. MICHAELS: And I ask the jury be instructed to disregard the last question and answer?

THE COURT: Yes. Disregard it.

MR. WELCH: The United States offers it in evidence.

MR. MICHAELS: May I have a chance to voir dire?

THE COURT: Yes.

VOIR DIRE EXAMINATION

BY MR. MICHAELS:

Q Mr. Randall I am sorry, I didn't get your full name.

A Randall Walker.

Q I beg your pardon, Mr. Walker. Mr. Walker, how big is Jack's Place?

A About as big as this courtroom.

Q In other words a fairly large store?

A Yes.

Q How many people work there besides yourself?

A Five.

Q Is it a men's store exclusively?

A Exclusively a men's store.

Q Is it a busy store in September?

A Very busy store any time.

Q For example in September of 1973 approximately how many transactions for the purchase of clothing do you believe that the store, as a total, would handle on a given day?

A I couldn't tell you definitely.

Q Could you give me your best estimate?

A We handle several three hundred, five hundred dollar sales per day and a thousand dollar sales each day.

Q So a three hundred dollar sale is not an unusual sale?

A No.

Q How much would you say your volume of business is per day in gross sales?

A Sometimes five, ten thousand.

Q What would be your average number of customers in the store per day?

MR. WELCH: If Your Honor please ---

THE COURT: Sustained.

Q Mr. Walker you did say on direct examination that you marked this on September 12th?

A That is what it looked like to me. I wrote "12" and then over it "14".

Q Do you remember the particular transaction?

A No. Because as I said a three hundred dollar is not out of the ordinary.

MR. MICHAELS: I object on the ground it is not probative to the defendant and it can't recall the particular transaction.

THE COURT: Let me see it.

(Document handed to the Court.)

THE COURT: Mr. Walker is this -- the

mark up on the top left hand corner "sold by" who is that?

THE WITNESS: That is me.

THE COURT: That is you. I will sustain the objection.

MR. WELCH: May I be heard on that?

THE COURT: Sure. Come up here.

(The following discussion took place at the Bench between the Court and counsel, outside the hearing of the Jury.)

MR. WELCH: If Your Honor please, the government's position is Agent Savage testified that hat was taken from the person of Robert Denson.

THE COURT: I missed that.

MR. WELCH: And this is my opportunity to establish the cash transaction.

THE COURT: Don't worry about it. I didn't get the link. I am in error. I overrule the objection.

(Government's Exhibit No. 11 for Identification received in evidence.)

(The following proceedings took place in open court before the Jury.)

MR. WELCH: If I may approach the witness

again, Your Honor.

THE COURT: Yes.

BY MR. WELCH:

Q Mr. Walker I previously asked you to tell the ladies and gentlemen of the jury what the dollar amount of that cash transaction was. Will you tell them what that is?

A Three hundred six dollars.

Q For what was that?

A One suit; three imports; one vest; one shirt; one tie and two pair of trousers.

MR. WELCH: I have no further questions.

Thank you, Your Honor.

CROSS EXAMINATION

BY MR. MICHAELS:

Q Mr. Walker, just a few additional questions. I think you testified when I asked you a few minutes ago, you did not handle the particular transaction?

A No.

Q Then based on this cash slip you don't know the size of the clothing that was bought; is that correct?

A That is correct.

Q You don't recall my client, do you?

A Who is your client?

Q This gentleman at the table with me.

A No, sir.

Q You don't recall whether or not he was with anyone else?

A No sir.

Q You don't recall whether or not he may have been purchasing this clothing, assuming this was he, for somebody else who was with him?

A No sir.

Q You don't recall whether somebody handed him some money to purchase the clothing?

MR. WELCH: Objection. These questions are all argumentative.

THE COURT: Overruled.

MR. MICHAELS: Will you repeat my question.

(The Court Reporter repeated the question as above recorded.)

A No, I do not.

Q Might I ask you if on here, under the line "customer" you used the word New York, New York; is that correct?

A Correct.

Q Do you know or do you have any explanation as to why you put down New York, New York on there?

A Apparently I asked the customer where he is from. Do you follow me? He said "New York". I never asked his his name or anything else.

Q In other words if he said "New York" you assumed it would be New York City?

A Yes.

Q I notice you put down New York, New York. Would it appear to you that the person who purchased these said he was from New York City?

A Yes.

THE COURT: Or did you assume that?

THE WITNESS: Yes. I probably wrote New York, New York. Like they say, New York is so nice they named it twice. New York, New York.

MR. MICHAELS: Thank you.

MR. WELCH: Nothing further; Thank you Your Honor.

THE COURT: Thank you, Mr. Walker.

THE WITNESS: You're welcome.

(Witness excused.)

MR. WELCH: Your Honor, at this time the United States rests.

THE COURT: All right. The jury may take a short recess.

(At this point the Jury retired from the courtroom.)

THE COURT: All right, Mr. Michaels.

MR. MICHAELS: If Your Honor please, at this time on behalf of the defendant I respect-

fully move this Court for judgment of acquittal on the both counts of the indictment, upon the grounds that the government has failed to sustain it's burden of proof, has failed to prove the defendant guilty on either count beyond a reasonable doubt.

THE COURT: I will deny it as to the first court. I would like to hear the government as to the second.

MR. WELCH: As to the second count, Your Honor, I presume the only thing Your Honor is concerned about is the state of the jeopardy of the lives, whether the gun was loaded.

THE COURT: Yes.

MR. WELCH: That is a question the jury can decide based on the testimony of Mrs. Tellerico and the way the gun was used. Was it used in a way to show it was unloaded. The only other thing is the self-serving admission by the defendant Jones to the Syracuse Police Department officer which was not substantiation evidence but only offered as impeachment evidence of Mr. Jones. Consequently we think there is sufficient to take it to a jury.

THE COURT: I think you are right. I will

deny the motion.

MR. MICHAELS: If I may I would like to take one matter up with the defendant before the jury is brought in.

(Discussion was held between Mr. Michaels and his client, the defendant, off the record.)

MR. MICHAELS: May I make a brief record of one important point. I have discussed this matter at length with Mr. Denson, my client, and I have advised him that he should not take the stand as a witness. I would like to make a record of the fact of my advice and also that he agrees with my advice and does not intend to become a witness for the defense.

Do you agree with that, Mr. Denson?

THE DEFENDANT: Yes.

THE COURT: Will there by other witnesses?

MR. MICHAELS: Yes. About two minutes worth.

THE COURT: All right. Recall the jury.

MR. MICHAELS: This need not be on the record.

(Discussion was held between the Court and counsel off the record.)

(At this point the jury was returned to

the courtroom.)

MR. MICHAELS: Your Honor, if the Court please, I would like to read Exhibit D, the stipulation, to the jury.

THE COURT: All right.

MR. MICHAELS: (Reading) "It is hereby stipulated that if called Kelvin Broadwater would testify that the sawed-off shotgun used during the commission of the robbery was not loaded. Signed Eugene Welch, Assistant United States Attorney; Lee S. Michaels, Defendant's attorney."

MR. WELCH: So stipulated.

* * * * *

THE COURT: All right, Mr. Michaels.

MR. MICHAELS: May it please the Court, Judge MacMahon, Mr. Welch, members of the Jury. This case has been going on now for about five days. The first chance that I had to talk with you was last Wednesday and then we began proof. This is my last chance to talk with you. And there is something very great that is at stake here today, and there is something very burdensome upon your shoulders.

You have a very weighty decision to make, a decision for the rest of your life you will have to live with and have to be with.

The procedure in this Court, when you were selected as jurors, you were selected by the judge-- I don't mean selected by the judge, but questioned by Judge MacMahon. Judge MacMahon asked you a few questions and the first question he asked you in substance was "Did you understand the fact that a man was accused by an indictment of having committed a serious crime or offense." Which was merely a way of bringing the man to court. And each and every one of you told the Judge that you agreed with that, and that you agreed with the law which says that it is the obligation of the Government to prove the Defendant guilty beyond a reasonable doubt.

And as I listened to you, although I didn't question you, as I listened to you answer those questions, it was based on your answers and your assurance to Judge MacMahon that you would agree with that principle of law that you became selected as jurors in this case. I relied on it.

When I made my opening statement to you on Wednesday, I pledged to you before this case was completed I was going to show you reasonable doubt.

I believe that I have shown you reasonable doubt in many respects beyond my wildest expectations.

You, as jurors, have sworn to try this case fairly under the law as Judge MacMahon will give it to you. If when you are completed with your deliberations you believe that, if you conclude your deliberations and you are unanimously convinced that the Government has proven its case beyond a reasonable doubt, if you are convinced that there is no reasonable doubt as to the Defendant's guilt, then by the oath that you took in this Court, you must convict him. You must convict him regardless of how bad you may feel; regardless of what the consequences might be; regardless of the fact that he is black or whatever color skin.

But in the same way, having taken that oath

and given that oath to this Court, if you are not convinced beyond a reasonable doubt; if perhaps you are suspicious that maybe the Defendant committed this crime, that maybe my client is guilty, that it looks like he probably is guilty, if on thoughts like that you come in and unanimously return a verdict of guilty, then you are violating your pledge to this Court.

I know that you people, from what I can hear when you were being selected as jurors, are fair-minded people. I don't believe that there is any one of you on this jury who, because the Defendant is black, will give that any weight, whatsoever. He is a person. And whether he is white, or black, or yellow, or red, a person brought before this Court on an accusation is entitled to a presumption of innocence.

As he sits there right now and as he sat there throughout this trial, he is clothed with that presumption of innocence. I expect from what you told the Judge when this case started, this man in your minds was innocent. And, unless the Government, and unless the proof satisfies you beyond a reasonable doubt to the point where you can live with this verdict for the rest of your lives, unless you are

satisfied to that extent, then I submit to you that you can't find him guilty, that you must find him not guilty.

The Defendant did not take the Stand. I told you when we started this trial, I would decide whether or not I would call him as a witness.

Now, in thinking this out with you for a minute, let's look at my decision. I did not call him as a witness because in my judgment as his lawyer, the Government didn't prove a case against him. The only proof that I offered was oral proof that the Government should have produced anyway, Mr. Mrozienski, who was here, anyway, and I wanted you to hear what he had to say. Mr. Weatherup, who was a witness on two or three prior occasions, suddenly wasn't in Court, and we didn't present any proof to you that the Government didn't have, because the Government didn't have a case.

Now this case has been going on since last Wednesday, and if I use the clock, I figure that we spent about four hours a day in the courtroom, so that we probably spent about thirteen hours in the courtroom trying this case.

Ladies and gentlemen, for all intents and purposes, this case was over after three or four hours of

testimony. This case was over on Thursday morning when Isaacs got off the Stand. From then on, there has been no significant proof of any consequences that you have heard that in any way or any probable way can be judged by you to implicate my client in this bank robbery.

Beginning with last Thursday, you heard two witnesses brought here by the Government, both of whom had previously pled guilty to this bank robbery, sworn by the Government, who testified that they robbed this bank and both testified that my client was not with them. And from then on, what you have seen is a parade of witnesses caused by the Government not to prove any facts but to disprove what his two witnesses said.

You recall that the Judge instructed you during the testimony of Officer Sardino on this very subject, this statement that Officer Sardino gave us about Mr. Jones on the 14th of September, implicating the Defendant, is evidence of nothing. At most, it is evidence that you can consider in judging whether or not Mr. Jones was telling the truth. But the only evidence in this case of any consequence taken at its strongest possible, at its greatest strength, is the testimony of Mr. Isaacs, who I will turn to

shortly. And apart from that, there is nothing. You have had a parade of nothing.

When Mr. Welch sums up, I hope he will answer for you a couple of questions which are in my mind and which, I hope, are on your mind.

Mr. Welch's proof must satisfy you beyond a reasonable doubt that the identification of Mr. Denson by Alton Isaacs was a satisfactory identification beyond a reasonable doubt.

I would like him to answer for you how Mr. Isaacs, on four occasions, looked at a statement, at two statements, one to the FBI, one to the Syracuse Police, looked at the FBI statement again in November and looked at it again in his office, how that man could state that the man who came up to him, in front of the bank, was five-foot-seven and one hundred and sixty pounds, and then says in Court he recognizes this man, who is obviously much heavier than one hundred and sixty pounds, obviously much taller.

You know when I conducted the little demonstration the other day, when I had Mr. Isaacs come off the Stand and I asked Mr. Denson to get into his stocking feet. Mr. Isaacs, who had testified that he, himself was five-foot-seven, sixty-seven inches, who was in his shoes, which probably lifted

at least a half an inch or maybe more, and even with his shoes on, and the Defendant with his shoes off, there is a difference of five or six inches, and you could see it for yourself, and he acknowledged it.

Is this the testimony on which you can convict a man? Is this the testimony on which you can convict a man and go home and live with such a conviction for the rest of your life? I don't think so.

This is the same man, Alton Isaacs, who testified before you in this courtroom that he had seen Mr. Denson before, playing basketball; that he had never seen the other two. And then admitted on cross-examination that under prior sworn testimony, on numerous occasions, over and over again before the Grand Jury, that he had seen all three of them. If he had seen all three of them, wouldn't he have realized that Kelvin Broadwater was short like himself; that Raymond Jones was tall, unlike himself, and that Robert Denson was tall, unlike himself.

In fact, if we take at face value his testimony that he had only seen Mr. Denson before, playing basketball, wouldn't he realize after observing him, that Mr. Denson was much taller than him. In fact, if Mr. Denson was short like he is, one speculates why he, himself didn't go up and shoot some baskets

with Mr. Denson, because they are of equal height. But, of course, they are not.

I don't see how you can be convinced by this kind of proof. Three inches here.

Another kind of proof that I thought had a little interesting twist to it.

You heard from Mrs. Armster some testimony, and I don't know why she was here, I guess Mr. Welch would say it was proof of the fact that Mr. Jones and my client were together, which, of course, I will not say, that it was not for the purpose of impeaching. But regardless of that, there is something interesting. Mrs. Armster's testimony and Miss Bolden's testimony this morning, Mrs. Armster, when I read the Grand Jury testimony to her, acknowledged that she was testifying under immunity. She acknowledged that she was not being prosecuted for receipt of stolen property. She acknowledged, in other words, that she had made a deal.

She testified that she could remember five months ago that Jones said, "We are going to rob a bank." Now, even if he said, "We", you know there are about two hundred and fifty thousand people in Syracuse. If I said right now, "Well, we are going to find Mr. Denson not guilty," is there any one of

you who can tell who the other person is with me? Of course not. "We" is almost always a term that people use to describe themselves.

But this woman who testified under immunity, to have her own freedom, said, "We".

And Miss Bolden, this morning, who came in and said clearly that he said he was going to rob the bank, he, being Raymond Jones.

So what if he was in the room? The fact that he was in there at eight o'clock in the morning, there is an awful lot of hours between eight o'clock and three o'clock. And interesting enough, both Mrs. Armster and Miss Bolden acknowledged that there were other people who came over to this apartment with the money. There was Jones. There was Broadwater. But not Denson. That he was there and then left.

But Miss Bolden, this morning, told you Jones, Broadwater, and two other blacks, whose names she did not know, came over with the money.

The name of my client is Bobby. How many times have you heard the name Bobby in this courtroom, referring to someone else?

We heard proof that there was a Bobby Allen who was over there. Bobby. A simple name.

Would you convict a man and have him bear the

consequences of guilt because he was named Bobby?

Would you convict him because he was at a place at eight o'clock in the morning with women who can barely tell you what was said in that room?

You can't convict on speculation. You can't convict on suspicions. You can only convict on hard facts. And if you have not got them, then you cannot convict. And they have not got them, I say. And you have not seen them.

I have a note here to discuss with you, to discuss direct evidence and impeaching evidence.

We have been here for five days in this case, but in five days, they have been only one day where we had the truth. We actually have a trial within a trial, and then another trial within that trial. The first day was the trial of Robert Denson. And then after Jones and Broadwater was sworn, it became the trial of credibility of Jones and Broadwater. Then we got to the trial within the trial.

We are not trying the credibility of a police officer and trying the credibility of witnesses.

You heard Officer Sardino come in here the other day, five months after a conversation, five months later come in, having been with his fellow police officers, having been with Counsel for the

Government, apparently no one was coming out of the courtroom, and he comes in here and very casually says, "Oh, yes, on September 14, Raymond Jones did say that." Gee. I would think that that would be pretty important. I would think that that would be something that they wanted to commit to writing.

And offered in evidence this morning, and they were received, were three exhibits, 11, 12, and 13. These constitute the entire record of what they call or what they refer to as the conversation with Mr. Jones in which he implicated my client, Bobby Denson.

I challenge you to take those into the Jury Room and see if you can find one mention, one mention of him in that conversation. It is not there.

The officer comes in and just casually picks up a photograph, and here is a photograph that is in evidence, and I am sure Mr. Welch will have you take a look at it--the e photographs have not been passed to the Jury, yet--here is the photographs of your bank robbers. These are filmstrips from a movie camera, there are hundreds of clips, and this witness just casually picks up Exhibit 8 and says, "That is the one." I looked at it with him and that is the one he pointed out. I ask you this morning, where

is the photograph? Has anybody seen that photograph this morning from his files?

You know Mr. Welch will argue to you in response to this, I am sure, he will say police officers are just the ordinary people that come in and tell the truth. I say this to you, and say it with all due respect to the marshals in this courtroom, I say the fact that a man carries a badge and carries a title of police officer does not give him immunity to tell you a falsehood.

I say when a police officer arrests a man, he wants to follow that through to conviction because he is sure he has got the right man.

If it is your word against a police officer, how are you going to win?

It just so happens that maybe in this courtroom there was some fabrication.

And now, apparently, the fabrication, if there was any, and if you decide there was any, apparently the fabrication was only for the purpose of impeaching Raymond Jones.

There is nothing in that testimony, and I think the Judge will instruct you on this, there is nothing in that police testimony that can be used by you as direct evidence pointing toward or away from

Mr. Denson's guilt or innocence.

Now I have talked some about Alton Isaacs' testimony. The man says he saw my client on September 12th. The man that he described as five-foot-seven, one hundred and sixty pounds, a man that he said he had seen before, playing basketball. We are not sure from his testimony, because he said it both ways, both times under oath, we are not sure whether he saw him with the other two or by himself. We know he saw him playing basketball. He still describes this man as five-foot-seven, and he testified that he had been shown photographs and that each time he was shown the same spread of photographs--I believe about nine was his last testimony--the FBI showed him nine,--and of course, naturally enough in this spread of nine should be the one he picked out the first time, and he kept picking out the same photograph. Once he looked at that photograph, which was a photograph of my client, once he looked at that photograph, his face was burned in his mind.

This in-court identification means nothing. He has been looking at that photograph four times since September 12th. How hard is it to point to the Jury and say, "That is him." He has been pointing

to that photograph. But how many of you without carrying a photograph of me, how many of you, two years from now, after seeing me in court for five or six days, after watching me up close, after seeing me at a distance, how many of you a year from now, if you pass me on the street, would remember me? Not one. And the reason you won't is, you are not carrying around a photograph. And this was something based on a conversation that took place like that (snaps fingers) and those two sentences would have gone by in ten seconds. On that, the Government asks you to convict. I don't see how you can.

As I was driving down this morning from Auburn, and I hope you will accept this little demonstration, you know we have civil cases and criminal cases. In a civil case, the burden is on the person who brings the case, the plaintiff, to prove the validity of that cause by a preponderance of the evidence. Not necessarily the number of witnesses, but by a preponderance of the evidence tipping the scales. In a civil case, that scale has to hit the bottom, because the person who brings that case is seeking to recover money, seeking to take money from the defendant. And the reason the proof must be so much stronger in a criminal case is because there is so

much more at stake. There is somebody's freedom. There is the rest of a person's life perhaps at stake. And that is why the scales must be tipped.

You know, I was thinking, I was trying to analyze this case and put it in the context of a civil case. I was wondering if in this courtroom, instead of Mr. Welch sitting here, that this was a case where the attorney for the First Trust and Deposit was here saying to Mr. Denson, "Give us back our money; give us twenty-four thousand dollars," and if that is what was at stake was money, I really wonder whether you on that case would with even a much lesser degree of proof, would ever had found a verdict directing him to pay that money. Because I don't think you have been convinced. I don't think you can be convinced with this proof.

I think this case cries out for a verdict of not guilty. You could not even find a verdict in a civil case let alone a verdict in a criminal case.

Ladies and gentlemen, I don't really know how to close a summation in a criminal case. I don't know how to leave you. I am afraid when I close a criminal case, when I close my summation, that I am sure I have forgotten something. I am afraid that I forgot to say something to you and by forgetting to

say something to you, and I am sure Mr. Welch will bring up something that I have forgotten, so I say to you this. I have tried rather than spend hours going through witness after witness, I have tried to give you a broad interpretation of this case and just point out those cross-areas of doubt that exist in this case and I think you jurors have not been here for so many weeks that I have to sit here and read pages and pages of testimony. But if I have forgotten to say something to you, and I can't speak to you again, so when Mr. Welch speaks to you, as you are listening to him, if a thought occurs to you, why don't you say to yourself, "What would Mr. Michaels say about it? I heard it this way. I don't buy that."

I want to say this to you. I hope that you as jurors, when you are done with this case, I hope you will think of me as a gentleman, because I try to be a gentleman in this courtroom, but there have been times when I was pretty rough, and I think you all know it. I am representing my client, and if I came to a situation where a particular witness called for getting rough, I hope that you appreciate that. Because sometimes I did come down hard on some witnesses.

I think you share with me the feeling that the testimony of Isaacs' is hard. This man was under the control of the Government for five months. I never had a chance to look at his face.

I hope none of you have been offended by anything I have done in this courtroom. But if you have, I hope you don't hold it against my client, Bobby Denson. Hold it against me. Come up to me in two years and say to me, "Michaels, I think you are a lousy lawyer. I don't like what you did." But don't hold it against my client.

When I opened this summation I said to you that I was relying on your pledge to Judge MacMahon, and I was pointing out to you that I have fulfilled my pledge to you. I am still relying on your pledge to Judge MacMahon that you will not find a person guilty if you are not convinced beyond a reasonable doubt. When you start work on this verdict in this case, if you say to yourself, "Well, maybe he is guilty, or the Government wouldn't have brought him here; it looks like he is guilty; the two other guys were black and the same age, and he is black; after all, he was there that morning." And you start saying, "Gee, I am going to convict him on that." Think to yourself, "My God, I have got to go home

tonight, I have got to live with this verdict. I have the power over this man's life in my hands right now." And given that same power, I wouldn't trade places with you, but given that power over this man's life, can I convict him because the Government say he is guilty? Can I convict him because there is some proof that says he is? Can you live with a verdict which violates your pledge to Judge MacMahon? Can you live better with a verdict of not guilty, even though you think maybe he is guilty because the Government says so? After all, the Government wouldn't waste all this time for five days if he is not guilty. Can you live better with that verdict if you are not convinced beyond a reasonable doubt, even though you think, well, there has been some evidence of it. Can't you live better with it if you bring in a verdict of not guilty?

You must insist in your deliberations, you must insist when you talk about this case and one of the other jurors analyzes this case for you, make some argument that you are split with, let's say you are the last holdout, you must make the rest of the jurors convince you that there is guilt beyond a reasonable doubt. If you are in the minority

you have to go by your own conscience.

You know my friend, Mr. Welch, is a very fair man. He tried a very fair trial, and I know Mr. Welch, who is here to prosecute this case, will stand here before you and urge you and say, "I ask you to not convict unless you are convinced beyond a reasonable doubt." And I will know he will ask you that because he loves justice, because he loves our system of law, he loves our system because we operate on rules of evidence. And he loves that more than a record of a successful trial, and he would ask you for the same thing.

Ladies and gentlemen, I expect that we are going to be going to lunch after this summation. I expect you will be hearing from Mr. Welch this afternoon. Listen carefully to what he says. Listen carefully to what Judge MacMahon tells you in his instructions, and then return a verdict of not guilty. Thank you.

THE COURT: I think we will take our luncheon recess at this time. Don't talk about the case now. Don't talk about it with each other or let anybody talk to you about it. Wait until you heard the closing argument of Government's Counsel and the Court's instructions.

Have a nice lunch. Return at 2:15.

(Whereupon at this point a luncheon recess was taken to 2:15 p.m., o'clock.)

* * * * *

(The following are the requests to charge as submitted to the Court.)

GOVERNMENT'S PROPOSED INSTRUCTIONS

PROPOSED INSTRUCTION NO. 1

Four essential elements are required to be proved in order to establish the offense charged in Count I of the Indictment:

First: That the deposits of the First Trust and Deposit Company, East Side Branch, Syracuse, N.Y., were at the time of the alleged offense insured by the Federal Deposit Insurance Corporation. This element has been stipulated to by the parties so there is no dispute for you to resolve: the deposits of the Bank were insured by the Federal Deposit Insurance Corporation;

Second: The act or acts of taking, from the person or presence of Mary Tallarico, Robert Hours and Paul J. Weatherup, money belonging to or in the care, custody, control, management, or possession of the First Trust and Deposit Company;

Third: The act or acts of taking such money from these three people, by means of intimidation; and,

Fourth: Doing such act or acts wilfully.

Devitt and Blackmar, Federal Jury Practice and Instructions (2d ed.), Vol. 2, Section 48.03.

PROPOSED INSTRUCTION NO. 2

To take "by intimidation" means wilfully to take by putting in fear of bodily harm. Such fear must arise from the wilful conduct of the person allegedly committing the offense, rather than from some mere temperamental timidity on the parts of Mrs. Tallarico and the other bank employees; however, the fear of these people need not be so great as to result in terror, panic, or hysteria.

A taking "by intimidation" must be established by proof of one or more acts or statements of the person allegedly committing the offense which were done or made, in such a manner, and under such circumstances, as would produce in the ordinary person fear of bodily harm.

However, actual fear need not be proved. Fear may be inferred from statements made and acts done by the person allegedly committing the offense, and by the bank employees; and from all the surrounding circumstances shown by the evidence in the case.

Devitt and Blackmar, Federal Jury Practice and Instructions (2d ed.), Vol, 2, Section 48.05.

PROPOSED INSTRUCTION NO. 3

If you find beyond a reasonable doubt from the evidence in this case that the defendant did commit or aid and abet the commission of the offense charged in Count I of the Indictment, that is, the taking from those employees of the First Trust and Deposit Company by intimidation the sum of about $23,414 belonging to and in the care, custody, control, management and possession of the Bank, then you must proceed to determine whether the evidence establishes that the lives of Mrs. Tallarico, Mr. Hours and Mr. Weatherup were put in jeopardy by means of a dangerous weapon, as charged in Count II of the Indictment.

A "dangerous weapon" is a weapon which either in its very nature or by reason of the use made of it is capable, when used against another, of causing serious bodily injury or even death. In this case, if you conclude that a gun was used in the commission of the offense, you may infer that the gun was loaded, even though there was no direct proof of this.

To "put in jeopardy the lives" of these people means to expose them to a risk of death by the use of a dangerous weapon. The issue in this respect is not whether these people were afraid but rather

whether from an objective point of view they were in a state of danger.

Devitt and Blackmar, Federal Jury Practice and Instructions (2d ed.), Vol. 2, Section 48.08; Reid, Branson Instructions to Juries (3d ed.), Vol. 1, Sec. 55; United States v. Marshall, 427 F.2d 434, 437 (2d Cir. 1970); United States v. Donovan, 242 F.2d 61, 63 (2d Cir. 1957).

PROPOSED INSTRUCTION NO. 4

The guilt of the defendant with respect to Counts I or II of the Indictment may be established without proof that he personally did every act constituting the offenses charged. The Indictment in this case does not explicitly use the phrase "aiding and abetting", but it does charge the defendant with violations of Section 2 of Title 18 of the United States Code, and Section 2 reads, in part:

> Whoever commits an offense against the United States, or aids, abets, counsels, commands, induces, or procures its commission, is punishable as a principal.

In other words, you may find the defendant guilty of either or both of Counts I and II if you conclude that he did aid and abet the commission of the particular crimes charged.

Devitt and Blackmar, Federal Jury Practice and Instructions (2d ed.), Vol. 1, Section 11.06; United States v. Tropiano, 418 F.2d 1069, 1083 (2d Cir. 1969), cert. den., 397 U.S. 1021 (1970).

PROPOSED INSTRUCTION NO. 5

The defendant cannot be found guilty of aiding and abetting the commission of a crime unless you first conclude that some other person committed that crime. If you do so find, you then may convict the defendant of aiding and abetting the other person in the commission of the crime if you find that the defendant knew of the illegal activity and desired to forward it. The defendant's knowledge, of course, may be established by direct or circumstantial evidence.

Shuttlesworth v. Birmingham, 373 U.S. 262, 265 (1963); United States v. Docherty, 468 F.2d 989, 992 (2d Cir. 1972); Devitt and Blackmar, Federal Jury Practice and Instructions (2d ed.), Vol. 1, Section 16.09.

PROPOSED INSTRUCTION NO. 6

Conduct of the defendant, including statements knowingly made and acts knowingly done upon being informed that a crime has been committed, or upon being confronted with a criminal charge, may be considered by you in light of all other evidence in this case, in determining guilt or innocence.

When the defendant voluntarily and intentionally offers an explanation, or makes some statement tending to show his innocence, and this explanation or statement is later shown to be false, the jury may consider whether this circumstantial evidence points to a consciousness of guilt. Ordinarily, it is reasonable to infer that an innocent person does not usually find it necessary to invent or fabricate an explanation or statement tending to establish his innocence.

Whether or not evidence as to a defendant's voluntary explanation or statement points to a consciousness of guilt, and the significance to be attached to any such evidence, are matters exclusively within your province.

A statement or explanation is "knowingly" made or done, if made or done voluntarily and

intentionally, and not because of mistake or accident or other innocent reason.

If it appears from the evidence in the case that the statement or explanation would not have been made, but for some threat of harm or some offer or promise of immunity from prosecution, or leniency in punishment, or other reward, such a statement or explanation should not be considered as having been voluntarily made, because of the danger that the defendant might be persuaded by the pressure of hope or fear to make a statement to things which are not true, in an effort to avoid threatened harm or punishment, or to secure a promised reward.

If the evidence in the case leaves you with a reasonable doubt as to whether the statement or explanation was voluntarily made, then you should disregard it entirely.

You will always bear in mind that the law never imposes upon a defendant in a criminal case the burden or duty of calling any witnesses or producing any evidence.

U.S. v. De Alejandro 361 F.2d 694, 697, 698 (2d Cir. 1966) U.S. Cert. denied, 385 U.S. 842, 87 S. Ct. 94 (1967)

U.S. v. Breland 376 F.2d 721, 724 (2d Cir. 1967)

Government's Proposed Instructions.

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U.S. v. Lacey 459 F.2d 86, 89 (2d Cir. 1972)

Devitt and Blackmar, Federal Jury Practice and Instructions (2d ed.), Vol. 2, Section 11.20.

PROPOSED INSTRUCTION NO. 7

The intentional flight of defendant immediately after the commission of a crime, or after he is accused of a crime that has been committed, is not of course sufficient in itself to establish his guilt, but is a fact which, if proved, may be considered by you in light of all other evidence in this case in determining guilt or innocence. Whether or not evidence of flight shows a consciousness of guilt, and the significance to be attached to any such evidence, are matters exclusively within your province.

In your consideration of the evidence of flight you should consider that there may be reasons for this which are fully consistent with innocence. These may include fear of being apprehended, unwillingness to confront the police, or reluctance to appear as a witness. Let me suggest also that a feeling of guilt does not necessarily reflect actual guilt.

You will always bear in mind that the law never imposes upon a defendant in a criminal case the burden or duty of calling any witness or producing any evidence.

Bailey v. U.S. 410 F.2d 1209 (10th Cir. 1969)

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Bird v. U.S. 187 U.S. 118, 131; 23 S. Ct. 42, 47 (1902)

Allen v. U.S. 164 U.S. 492, 478; 17 S. Ct. 154, 156 (1896)

Alberty v. U.S. 162 U.S. 497, 509; 16 S. Ct. 864, 868 (1896)

Rosetti v. U.S. 315 F.2d 86,87 (9th Cir. 1963)

Beuroughe v. U.S. 365 F.2d 431, 432-433 (10th Cir. 1966)

Golliher v. U.S. 362 F.2d 594, 604 (8th Cir. 1966)

U.S. v. Dear 413 F.2d 1371 (5th Cir. 1969) 27 FRD, 39, 58

Devitt and Blackmar, Federal Jury Practice and Instructions (2d ed.), Vol. 1, Section 11.18.

GOVERNMENT'S SUPPLEMENTAL PROPOSED INSTRUCTIONS

Amendment to Proposed Instruction No. 3

(The Government respectfully submits the following paragraph instead of the original second paragraph of Proposed Instruction No. 3 and requests the remainder of Proposed Instruction No. 3 be given as submitted.)

A "dangerous weapon" is a weapon which either in its very nature or by reason of the use made of it is capable, when used against another, of causing serious bodily injury or even death. In this case, if you conclude that a gun was used in the commission of the offense, you may infer that the gun was loaded from all the circumstances, even though there was no direct proof of this. In this regard, consider the evidence of the way in which the gun was used. Was it used to threaten others in such a way that it had to be loaded? On the other hand, you have heard that the gun was not loaded during the robbery and to that you can give such credence as you think it deserves.

United States v. Marshall, 427 F.2d 434 (2d Cir. 1970); see also United States v. Shelton, 465 F.2d 361 (4th Cir. 1972); United States v. Waters,

461 F.2d 248, 252 (10th Cir. 1972); Bradley v. United States, 447 F.2d 264 (8th Cir. 1971), vacated other grounds, 404 U.S. 567 (1972); but see United States v. Cooper, 462 F.2d 1343 (5th Cir.) cert. denied, 409 U.S. 1009 (1972); United States v. Beasley, 438 F.2d 1279 (6th Cir. 1971).

Proposed Instruction No. 8

An admission or incriminatory statement made or act done by one defendant, outside of Court, may not be considered as evidence against another defendant who was not present and so did not see the act done or hear the statement made.

Devitt and Blackmar, Federal Jury Practice and Instructions (2d ed.), Vol. 1, Section 11.24.

Proposed Instruction No. 9

Evidence that at some other time a witness has said or done something which is inconsistent with that witness' testimony at the trial, may be considered by the jury for the sole purpose of judging the credibility of the witness; but may never be considered as evidence or proof of the truth of any such statement.

In this regard, you will recall that I cautioned you during this trial, that what the Syracuse Police Department Officers told you about what Raymond Jones had said to them was not evidence or proof of the truth of Jones' statements to the police but was only for your consideration as to whether you believe the testimony of Raymond Jones.

It is not evidence against Denson but goes only to the credibility of the witness Jones, if you find that what he told the Syracuse Police was inconsistent with his testimony during this trial.

Devitt and Blackmar, Federal Jury Practice and Instructions (2d ed.), Vol. 1, Section 12.12; United States v. Pacelli, 470 F.2d 67 (2d Cir. 1972), cert. denied, 410 U.S. 983; United States v. Lipscomb, 425 F.2d 226 (6th Cir. 1970).

DEFENDANT'S PROPOSED INSTRUCTIONS

DEFENDANT'S PROPOSED INSTRUCTION NUMBER 1

You are instructed to resolve any conflict or uncertainty on the issue of identification. You are instructed that identification may be made through the perception of any of the witness' senses, and that it is not essential that the witness himself be free from doubt as to the correctness of his opinion. The identification testimony may be treated by the jury as a statement of fact by the witness: (1) if the witness had the opportunity to observe the accused; (2) if the witness is positive in his identification; (3) if the witness' identification testimony is not weakened by prior failure to identify or by prior inconsistent identification; and (4) if, after cross-examination, his testimony remains positive and unqualified. In the absence of any one of these four conditions, however, you are admonished that Mr. Isaacs' testimony as to identity must be received with caution and scrutinized with care. The burden of proof on the prosecution extends to every element of the crime charged, including the burden of proving beyond a

reasonable doubt the identity of the defendant as a perpetrator of the crime for thich he stands charged.

Adapted from:
Devitt and Blackmar, Federal Jury Practice and Instructions, Supplement to Section 11.32, page 71-72.
United States v. Barber, 442 F.2d 517 (3d Cir. 1971)

DEFENDANT'S PROPOSED INSTRUCTION NUMBER 1(A)
(Proposed only if Proposed Instruction Number 1 is refused)

The evidence in this case raises the question of whether the defendant was in fact the criminal actor and necessitates your resolving any conflict or uncertainty in testimony on that issue.

The burden of proof is on the prosecution with reference to every element of the crime charged and this burden includes the burden of proving beyond reasonable doubt the identity of the defendant as the perpetrator of the crime charged.

Devitt and Blackmar, Federal Jury Practice and Instructions, Section 11.32.

DEFENDANT'S PROPOSED INSTRUCTION NUMBER 2

A confession made outside of Court by one defendant may not be considered as evidence against another defendant not a party to such confession.

Devitt and Blackmar, Federal Jury Practice and Instructions, Section 11.23.

DEFENDANT'S PROPOSED INSTRUCTION NUMBER 3

An admission or incriminatory statement made or act done by one defendant, outside of Court, may not be considered as evidence against another defendant who was not present and so did not see the act done or hear the statement made.

In this case, Mr. Jones and Mr. Broadwater have given statements in Court and elsewhere incriminating themselves. These admissions are not to be considered as evidence against Mr. Denson.

Further any evidence that Mr. Jones made a statement to members of the Syracuse Police Department is not evidence against Mr. Denson. It is merely to be considered by you in determining Mr. Jones' credibility as a witness.

Adapted from:
Devitt and Blackmar, Federal Jury Practice and Instructions, Section 11.24.

DEFENDANT'S PROPOSED INSTRUCTION NUMBER 4

The law does not require the prosecution to call as witnesses all persons who may have been present at any time or place involved in the case, or who may appear to have some knowledge of the matters in issue at this trial. Nor does the law require the prosecution to produce as exhibits all papers and things mentioned in the evidence.

However, in judging the credibility of the witnesses who have testified, and in considering the weight and effect of all evidence that have been produced, the jury may consider the prosecution's failure to call other witnesses or to produce other evidence shown by the evidence in the case to be in existence and available.

In this case, it has been established that the Government subpoened Mr. Andrew Mrozienski, an investigator for the Syracuse Police Department, then failed to call him as a witness. The defense called Mr. Mrozienski as a hostile witness.

The jury will always bear in mind that the law never imposes upon a defendant in a criminal case the burden or duty of calling any witnesses or producing any evidence, and no adverse inferences may be drawn from his failure to do so.

Adapted from:
Devitt and Blackmar, Federal Jury Practice and Instructions, Section 12.15.

DEFENDANT'S PROPOSED INSTRUCTION NUMBER 4(A)
(Proposed only if Proposed Instruction Number 4 is refused)

If it is peculiarly within the power of either the prosecution or the defense to produce a witness who could give material testimony on an issue in the case, failure to call that witness may give rise to an inference that his testimony would be unfavorable to that party. However, no such conclusion should be drawn by you with regard to a witness who is equally available to both parties, or where the witness's testimony would be merely cumulative.

The jury will always bear in mind that the law never imposes on a defendant in a criminal case the burden or duty of calling any witnesses or producing any evidence.

Devitt and Blackmar, Federal Jury Practice and Instructions, Section 11.33.

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DEFENDANT'S PROPOSED INSTRUCTION NUMBER 5

You are not obliged to accept testimony, even though the testimony is uncontradicted and the witness is not impeached. You may decide, because of the witness's bearing and demeanor, or because of the inherent improbability of his testimony, or for other reasons sufficient to you, that such testimony is not worthy of belief.

Adapted from:
Devitt and Blackmar, Federal Jury Practice and Instructions, Section 12.17.

DEFENDANT'S PROPOSED INSTRUCTION NUMBER 6

You, as jurors, are the sole judges of the credibility of the witnesses and the weight their testimony deserves.

You should carefully scrutinize all the testimony given, the circumstances under which tends to show whether a witness is worthy of belief. Consider each witness's intelligence, motive and state of mind, and demeanor and manner while on the Stand. Consider the witness's ability to observe the matters as to which he has testified, and whether he impresses you as having an accurate recollection of these matters. Consider also any relation each witness may bear to either side of the case; the manner in which each witness might be affected by the verdict; and the extent to which, if at all, each witness is either supported or contradicted by other evidence in the case.

Inconsistencies or discrepancies in the testimony of a witness, or between the testimony of different witnesses, may or may not cause the jury to discredit such testimony. Two or more persons witnessing an incident or a transaction may see or hear it differently; and innocent misrecollection, like failure of recollection, is

not an uncommon experience. In weighing the effect of a discrepancy, always consider whether it pertains to a matter of importance or an unimportant detail, and whether the discrepancy results from innocent error or intentional falsehood.

After making your own judgment, you will give the testimony of each witness such credibility, if any, as you may think it deserves.

Devitt and Blackmar, Federal Jury Practice and Instructions, Section 12.01.

DEFENDANT'S PROPOSED INSTRUCTION NUMBER 7

The testimony of an informer who provides evidence against a defendant for pay, or for immunity from punishment, or for personal advantage or vindication, must be examined and weighed by the jury with greater care that the testimony of an ordinary witness. The jury must determine whether the informer's testimony has been affected by interest, or by prejudice against defendant.

In this case, Mrs. Rosalee Armster has admitted that she was testifying under immunity from prosecution.

You may also determine that Alton Issacs testified as he did for personal advantage, this being his own desire to escape the threat of prosecution.

Adapted from:
Devitt and Blackmar, Federal Jury Practice and Instructions, Section 12.02.

DEFENDANT'S PROPOSED INSTRUCTION NUMBER 8

As accessory after the fact is one who, with knowledge that an offense against laws of the United States has been committed, wilfully receives, relieves, comforts or assists the offender, in order to hinder or prevent the latter's apprehension, trial or punishment.

An act is done "wilfully" if done volumtarily and intentionally, and with the specific intent to do something the law forbids; that is to say, with bad purpose either to disobey or to disregard the law.

In this case, it is for you to determine whether or not Rosalee Armster was an accessory after the fact.

Adapted from:
Devitt and Blackmar, Federal Jury Practice and Instructions, Section 11.11.

DEFENDANT'S PROPOSED INSTRUCTION NUMBER 9

An accomplice is one who unites with another person in the commission of a crime, voluntarily and with common intent. An Accomplice does not become incompetent as a witness because of participation in the crime charged. On the contrary, the testimony of an accomplice alone, if believed by the jury, may be of sufficient weight to sustain a verdict of guilty, even though not corroborated or supported by other evidence. However, the jury should keep in mind that such testimony is always to be received with caution and weighed with great care.

You should never convict a defendant upon the unsupported testimony of an alleged accomplice, unless you believe that unsupported testimony beyond reasonable doubt.

It is for you to determine whether or not Alton Isaacs was an accomplice.

Mrs. Rosalee Armster has admitted that she received immunity from prosecution as an accessory after the fact.

Adapted from:
Devitt and Blackmar, Federal Jury Practice and Instructions, Section 12.04.

DEFENDANT'S PROPOSED INSTRUCTION NUMBER 10

In order to cause another person to commit a criminal act, it is necessary that a person wilfully do, or wilfully fail to do, something which, in the ordinary performance of official duty, or in the ordinary course of the business or employment of such other person, or by reason of the ordinary course of nature or the ordinary habits of life, results in the other person's either doing something the law forbids, or failing to do something the law requires to be done.

An act or a failure to act is "wilfully" done, if done voluntarily and intentionally, and with the specific intent to do something the law forbids, or with the specific intent to fail to do something the law requires to be done; that is to say, with bad purpose either to disobey or to disregard the law.

In this case, it is for you to determine whether or not Mr. Isaacs wilfully caused others to rob the First Trust and Deposit Company on September 12, 1973.

Adapted from:
Devitt and Blackmar, Federal Jury Practice and Instructions, Section 11.09.

DEFENDANT'S PROPOSED INSTRUCTION NUMBER 11

Whoever commits an offense against the United States, or aids, abets, counsels, commands, induces, or procures its commission, is punishable as a principal.

Whoever wilfully causes an act to be done, which if directly performed by him or another would be an offense against the United States, is punishable as a principal.

In other words, every person who wilfully participates in the commission of a crime may be found to be guilty of that offense. Participation is wilful if done voluntarily and intentionally, and with the specific intent to do something the law forbids, or with the specific intent to fail to do something the law requires to be done; that is to say, with bad purpose either to disobey or to disregard the law.

It is for you to determine whether Mr. Isaacs wilfully participated in the robbery of the First Trust and Deposit Company. If you find that he knew that the bank was going to be robbed and agreed to tap on the window, you are permitted to find that he was a principal, even if he received no money.

Adapted from:
Devitt and Blackmar, Federal Jury Practice and Instructions, Section 11.06. See also: Norris v. United States, 152 F.2d 808; United States v. Gallishaw, 428 F.2d 760; United States v. Fernandez, 428 F.2d 578; United States v. Dallas, 418 F.2d 221.

DEFENDANT'S PROPOSED INSTRUCTION NUMBER 12

Evidence that at some other time a witness, other than the accused, has said or done something, or has failed to say or do something, which is inconsistent with the witness' testimony at the trial, may be considered by the jury for the sole purpose of judging the credibility of the witness; but may never be considered as evidence or proof of the truth of any such statement.

Where, however, the witness is a defendant on trial in the case, and by such statement or other conduct, the defendant admits some fact against his interest, then such statement or other conduct, if knowingly made or done, may be considered as evidence of the truth of the fact so admitted, as well as for the purpose of judging the credibility of the defendant as a witness.

An act or omission is "knowingly" done, if done voluntarily and intentionally, and not because of mistake or accident or other innocent reason.

Devitt and Blackmar, Federal Jury Practice and Instructions, Section 12.13.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

- -x

UNITED STATES OF AMERICA,

- against -

ROBERT LEE DENSON,

Defendant.

- -x

The trial in the above-entitled matter was continued, pursuant to adjournment at the United States District Courthouse held in and for the Northern District of New York, at Utica, New York, on February 20, 1974, before HON. LLOYD F. MACMAHON, United States District Judge sitting by designation, and a Jury.

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JUDGES' CHARGE

MacMAHON, J.:

THE COURT: All right, bring the Jury in.

(At this point the Jury was returned to the courtroom.)

THE COURT: It now becomes my function to instruct you on the law that applies to this case. It is your function and duty to accept the law as I give it to you, whether or not you agree with it, and apply it to the facts as you find them. In short, I am the exclusive judge of the law. You, on the other hand, are the exclusive judges of the facts. You, and you alone decide what weight, what effect, and what value you will give to the evidence. You decide whether or not to believe the witnesses and, of course, ultimately you decide the guilt or innocence of the Defendant in this case.

Now, you are not to conclude from any rulings I have made throughout this trial or any questions that I have asked that I have any opinion one way or the other as to the guilt or innocence of the Defendant. That decision is exclusively up to you.

Now how do you go about finding the facts. Finding the facts is merely a process by which you, the Jury, consider the exhibits which have been

received in evidence, consider the testimony of all the witnesses on direct and on cross-examination, sift out what testimony you believe, weigh it in the scale of your reasoning powers, draw such conclusions as your common sense and experience tell you the evidence supports and justifies, and decide just where the truth lies in this case.

Now in this connection evidence may be of two general kinds, direct evidence and circumstantial evidence. Evidences direct when the facts are shown by exhibits which have been received in evidence or when shown by witnesses who have actual knowledge of them from something that they have learned through the exercise of one of their senses, their sight, their hearing, their smell, and so on.

Circumstantial evidence merely means drawing a logical inference or conclusion from all of the other facts that have been seen or heard.

The classic example of circumstantial evidence is Robinson Crusoe studying the footprint in the sand. He did not see the man, but his knowledge of human nature and other signs that he had, he decided that there was another man on the island. Of course, not all circumstantial evidence is as clear and as convincing as the example I have

given to you. But, nonetheless, you are all familiar with the process you use in your everyday lives. You draw the logical conclusions from all of the other facts and you apply that same logical process here.

Now, it is your memory of the evidence that controls. Not the way I remember it. Not the way Counsel remember it.

Sometimes juries are only out a few minutes and I get a note that they want the testimony of this witness read or that witness read and they obviously haven't even tried to remember it or discuss it with each other or have their memory refreshed from another juror who might remember it. That is not to say that you are not entitled to have testimony read back if you wish it, but before you do that, you make sure that you don't remember it. Make an attempt to remember it by discussing it with your fellow jurors to see if your own memory can't be stimulated or refreshed by the other juror's memory of the evidence. If you should want any evidence read to you, or any part of this charge, it takes some time to find it. The reporter has to look through his notes. The testimony has not yet been transcribed.

Now, when I say it is your memory that controls, if your memory agrees with what the lawyers told you as their version of the evidence in their closing arguments, you can accept what they say. But to the extent that you have a different recollection, you are bound to reject their version of the evidence and rely upon on your own memory. What I said about the lawyers also applies to me.

One of your most important functions is determining which witnesses you will believe, and that is so as to every witness whether called by the Government or by the Defense, and whether or not the witness is a police officer or a member of the FBI. You are not to be influenced by the position of the witness, nor by the number of witnesses called by either side; nor by the number of documents received in evidence. You are concerned not with the quantity but with the quality of the evidence.

The first test which you should apply in determining the trustworthiness of the witness is to measure what he says against your everyday common sense. You are not bound to believe unreasonable statements or accept testimony which

insults your intellegence just because the statements are made under oath in a public court.

You saw the witnesses in this case. In deciding whether to believe a witness you should consider his manner on the Stand as well as what he said. I saw you observing these witnesses with particular care as they were testifying. You were obviously sizing them up. How did a witness impress you? Was the witness being frank or was he being evasive? Was his version of the facts straightforward or was he trying to hide anything? Was he just parroting answers; did he have any motive for testifying falsely; is he interested in any way in the outcome of this case? How strong or weak was his memory on important evidence? In short, can you rely on him? Can you trust him? Did he show friendliness or hostility or threat toward either side in this case? You ought to consider also the witness' opportunity to know the facts about which he testified. And the probability or improbability of what he said. How did his testimony add up when considered with all of the other testimony? How far does his story check out with the other evidence? Are there any inconsistencies in his testimony, and if so,

how important are they? Has he made an inconsistent statement on an earlier occasion, and if so, how important is that inconsistency? In determining whether there were any inconsistent statements on earlier occasions, you should consider not only what the witness said but also what he left out. Evidence that at some other time the witness has said was done, something which is inconsistent with the testimony, and that witness at the trial should be considered by you for the sole purpose of judging the credibility of the witness, but it may never be considered as evidence or proof of the truth of any such statement.

In this connection, you will recall that at the time Jones testified, you will recall that Jones testified here that he, Broadwater, and another man robbed the bank. Police officers testified, however, that shortly after he was arrested, Jones confessed and told them that Denson was the third man who participated in the robbery.

As I told you at the time, Jones' statement to the police officers implicating the Defendant is not binding on the Defendant Denson and it may not be considered by you as evidence of his guilt,

nor as proof of the truth of Jones' statement, or as affirmative proof that Denson was, in fact, the third man. The officer's statement about what Jones told him may be considered by you only on the question of whether you believe the testimony of Jones on this trial. If you find that his statement to the police is inconsistent with his testimony here.

Jones and Broadwater also testified that they had pled guilty to the crime charged here. Now, you may not consider the fact that they confessed to the crime or that they pled guilty or that they admitted and informed you of that on the witness stand as evidence, as Denson was not a party to such confession, and he has denied his guilt here by his plea of not guilty.

Broadwater, Jones, and Mrs. Armster and perhaps, Mr. Isaacs, may be considered by you as accomplices in this crime. If you find as to any one of them they have knowingly and voluntarily united with Jones and Broadwater and a third man in the commission of this crime of bank robbery with a common purpose and intent to commit the crime.

There is no question in the evidence that

Broadwater and Jones united to commit a crime. There is some question whether Isaacs and Mrs. Armster voluntarily joined in the crime. That is for you to decide. Did they know that a crime was being committed? Did they unite with the others, with the robbers, to commit the crime or to share in the proceeds of it? Those are questions which you must decide as to Isaacs and Mrs. Armster.

And now, if you find that they were accomplices, you should consider that fact in testing their credibility and in weighing their testimony. Obviously, a witness is not incapable of telling the truth about what occurred because he is an accomplice, but you must examine his testimony with special care and act upon it with caution.

In the prosecution of a crime, the Government is frequently called upon to use persons who are accomplices. Often it has no choice. After all, the Government must rely on witnesses truths and actions, such as they are. Otherwise, in many instances, it would be difficult to detect and prosecute wrongdoers, and this is particularly so in cases involving a joint-crime venture.

Here there is no dispute that three people at least were jointly involved in the commission of this crime. Frequently, it happens that only those in interest of the venture can give evidence which is material and important to the case.

Now there is no requirement that the testimony of an accomplice be corroborated or supported or backed up by other evidence. Conviction can rest upon the testimony of an accomplice, alone, if you believe.

The credibility of Jones, Broadwater, Isaacs, and of Mrs. Armster, like all other witnesses, is for you and you alone to determine, taking into account the interest of the witness, his relationships, whether friendly or hostile to the parties in this case. His motive. Any inducements or consideration he may have received or hoped to receive from the Government. Any hostility he may feel toward the Government or toward the Defendant, and any other evidence you recall and believe which may reasonably be considered to influence and color his testimony.

Now, the witnesses, Broadwater and Jones, also testified that they had been convicted of crimes in the past. Indeed, both admitted it here in open court that they had pled guilty to the crime

charged here.

You may consider the fact that a witness has been convicted of a crime in determining his credibility and the weight to be given to his testimony.

Now if you find that any witness has deliberately and wilfully lied with respect to any material fact in his or her testimony upon this trial, you may follow either one of two courses. You may accept as much of the witness's testimony as you believe, or you may reject his entire testimony.

Now before discussing the crimes charged here, I want to remind you that an indictment is a mere accusation. It is not evidence of the truth of the charge made and you are to draw no inference of guilt from the mere fact that the Defendant has been indicted. An indictment simply means that a defendant has been accused of a crime. The Defendant has denied the charge made against him here by his plea of not guilty. The Defendant has no burden of proof to sustain in this case. He is under no obligation to produce any witnesses. He is presumed to be innocent and this presumption of innocence continues throughout the trial and during your

deliberations of the case. This presumption is overcome when, and only when the Government establishes the guilt of the Defendant beyond a reasonable doubt.

Now what do I mean by beyond a reasonable doubt? As the phrase implies, a reasonable doubt is a doubt based upon reason. A reason which appears in the evidence or in the lack of evidence. It is not some vague, speculative, imaginary doubt, nor doubt based upon emotional sympathy or prejudice, or upon what some juror may regard as an unpleasant duty. The Government is not required to prove the Defendant's guilt beyond a doubt which is called an absolute or mathematical certainty, because such proof is usually impossible in human affairs. You should take the evidence as you remember it. Sift out what you believe. Discuss it. Analyze it. Weigh it in the scale of your reasoning powers and compare your views of the evidence with that of your fellow jurors. If that process produces a solemn belief or conviction in your mind such as you would be willing to act upon without hesitation, if this was an important matter of your own. Then you may say that you have been convinced beyond a reasonable doubt.

On the other hand, if your mind is wavy or so uncertain that you would hesitate for acting if this was an important matter of your own, then you have not been convinced beyond a reasonable doubt and your verdict must be not guilty.

And now in order that you may be guided in your deliberations on Counts I and II, I am going to hand your foreman a copy of the indictment. You will notice that Counts I and II name three defendants. But only the Defendant Robert Lee Denson is on trial before you. He is the only one whose guilt or innocence you must announce in your verdict, although in considering his guilt or innocence you may have to determine the nature of the participation of the other named defendants.

Now, Count I of the indictment charges that on or about September 12, 1973 at Syracuse, New York, Robert Lee Denson, Jr., the Defendant on trial, Kelvin Broadwater, and Raymond Jones, by intimidation did take from the person and presence of Mary Tallarico, Robert Hours, and Paul J. Weatherup, about twenty-three thousand four hundred and fourteen dollars in money belonging to and in the care, custody, control, management, and possession of the First Trust and Deposit Company,

the deposits of which were then insured by the Federal Deposit Insurance Corporation.

Now in order to establish the charge contained in Count I, the Government must prove to your satisfaction beyond a reasonable doubt each of the following three facts.

One, that the deposits of the First Trust and Deposit Company were insured by the Federal Deposit Insurance Corporation as of September 12, 1973. There is a stipulation by the parties that the deposits were so insured by the Federal Deposit Insurance Corporation on that date. So there is nothing for you to decide as to the first fact. That is conceded.

Two. That the Defendant knowingly, wilfully and knowingly took money, or aided and abetted others who took money belonging to or was under the care, custody, control, management, and possession of the bank, from the person and presence of a bank employee, here Mary Tallarico, Robert Hours, and Paul J. Weatherup.

Again, there is no dispute in the evidence that on September 12, 1973, three men entered the bank, held up the teller, Mrs. Tallarico, with a sawed-off shotgun, and took money from the possession

of the bank and from the presence and persons of Mrs. Tallarico. The question, of course, here is whether the Defendant on trial was one of those robbers or whether he knowingly aided and abetted one of the robbers.

The third fact which the Government must establish beyond a reasonable doubt is that the money was taken by force, violence, or intimidation from the person or presence of another. Here, a bank employee.

Now to back up, intimidation means to take money by putting any person in fear of bodily harm and such fear must arise from something said or done by the robber or robbers rather than from mere timidity on the part of the victim. It is not necessary, however, that the victim become terrified, panic-stricken, hysterical, or was afraid at all. If you find that an ordinary person would have been put in fear of bodily harm when a sawed-off shotgun was pointed at them, or from anything said, that the alleged robber or robbers said or did under all of the circumstances, then you may find that there was a taking by intimidation.

Now, Count II of the indictment charges that on or about September 12, 1973, at Syracuse, New

York, Robert Lee Denson, Jr., the Defendant on trial, Kelvin Broadwater, and Raymond Jones, by force and by violence and by intimidation did take from the persons and presence of Mary Tallarico, Robert Hours, and Paul J. Weatherup, about twenty-three thousand four hundred and fourteen dollars in money belonging to and in the care, custody, control, management, and possession of the First Trust and Deposit Company, the deposits of which were then insured by the Federal Deposit Insurance Corporation, and that Denson, Broadwater, and Jones in committing the aforesaid offense did assault Mrs. Tallarico, Mr. Hours, Mr. Weatherup, and others, and did put in jeopardy the life of said persons by means and use of a dangerous weapon, that is, a sawed-off shotgun.

Now if you find beyond a reasonable doubt from the evidence that the Defendant did commit or aided and abetted in the commission of the crime charged in Count I of the indictment, then you must determine whether the evidence also establishes that the lives of Mary Tallarico, Robert Hours, or Paul J. Weatherup, or others, were put in jeopardy by means of a dangerous weapon as charged in Count II of the indictment.

The essential difference between Counts I and II is putting the lives of the bank employees, or others, in jeopardy by means of a dangerous weapon.

A dangerous weapon is a weapon which either in its very nature or by reason of the use made of it in all of the circumstances is capable of use against another to cause a serious bodily injury, or even death.

In this case, you can conclude a gun was used in the commission of the offense, you may infer that the gun was loaded from all of the circumstances, even though there was no direct proof of this.

In this regard, consider the evidence of the way in which the gun was used. Was it used to frighten others in such a way that it had to be loaded? Did the flourisher of the gun intend to use it?

On the other hand, you have heard that the gun was not loaded during the robbery, and to that you can give such credence as you think it deserves. In short, you are not bound to accept the testimony of Broadwater to the effect that the gun was not loaded. You can consider that and should consider that testimony along with the other evidence bearing

on the fact that whether the gun was a dangerous weapon and whether the barrel of that gun and those working with it in that robbery, joining in that robbery, put the lives of the tellers or other persons in jeopardy or danger.

To put in jeopardy the lives of bank employees means to expose them to danger of death by the use of a dangerous weapon.

The question here is not whether these people were afraid, but rather whether under the particular circumstances they were put in a state of danger, where they were in a state of danger. Jeopardy means danger. Not fear.

You are not concerned, therefore, with the subjective beliefs or feelings of the victim as you were in Count I. But here, in Count II, you are concerned with the circumstances shown by an objective actual state of danger.

You will notice that in the indictment there is nothing said about aiding and abetting. That phrase nowhere appears in the indictment. Nevertheless it does charge the Defendant with aiding and abetting in both Count I and Count II by reference to what is known as the Aiding and Abetting Statute, which is Title 18, United States

Code, Section 2. You will notice those numbers on the bottom of the Count.

Now, the law of the United States provides that whoever commits an offense against the United States or aids and abets, counsels, induces, or procures its commission, is punishable as a principal. Thus, if you find, you may find the Defendant guilty of either or both counts if you will find beyond a reasonable doubt that he knowingly aided and abetted another in the commission of the particular crimes charged in Count I and Count II. In such circumstances, the Defendant would be just as guilty of the crime as if he had committed it himself.

Before you can convict a defendant, however, of aiding and abetting, you must find that the crime was committed by another, hereby, Broadwater and Jones, and that the Defendant consciously associated himself with a criminal venture with the intent that his conduct would aid its success. You must be convinced beyond a reasonable doubt that he was doing something to forward the crime of the other person, that he was a conscious, knowing participant rather than a mere bystander or spectator; that he had a stake in its success.

If you find that those factors were present beyond a reasonable doubt, then you will find the Defendant was an aider and abettor.

The important question in this case is whether the Defendant, Denson, was in fact the third robber. And that poses the question of the proof as to the identity of the third robber.

You will recall, I am sure, the testimony of Alton Isaacs to the effect that he was standing outside the bank; three persons, all whom he recognized, having seen them playing basketball earlier, including the Defendant, came to him and told him to tap on the window if he saw any cops coming, or words to that effect.

Alton Isaacs identified the Defendant here in Court as the third robber.

Against that, you have the testimony of Broadwater and Jones to the effect that the Defendant was not the third robber.

The Government has also offered a substantial amount of circumstantial evidence, evidence that the Defendant, shortly after the robbery, spent substantial amounts of cash; that he was seen both before and after the crime in the company of Broadwater by a number of people, and other similar

circumstantial evidence. Don't think that because I only mention those little bits of the evidence that I think that that is the only evidence that is important. Or that I intend to emphasize that evidence. Rather, I am simply mentioning it to focus the problem that you have with respect to identification. The other evidence is equally important, and it is for you to give it such weight as you think it deserves.

Now the reliability of an identification of an eyewitness like Isaacs' obviously depends upon all the surrounding circumstances. There was evidence here that Isaacs identified the Defendant Denson on earlier occasions by selecting him from amoung a group of photographs, a book of photographs. The circumstances of those earlier identification procedures should be considered by you in determining the reliability of Isaacs' identification of the Defendant on this trial, as the third robber.

As I recall it, he picked Denson out on the very day of the robbery. Those, as to the photographic identification, as some of the factors you should consider, and the lapse of time between the witness' initial observation of the third robber at the scene of the crime and his viewing of the

photographs; the time of the day the viewing sessions were held, how long they lasted, the witness' physical and emotional state at that time, the number of photographs shown to the witness and whether the Defendant's picture was among them; whether the witness was able to identify the Defendant as the third robber at the time of viewing the pictures, and if so, whether his identification was quick and certain, or hesitant and uncertain.

The circumstance of the witness' identification of the Defendant as the third robber may also be considered by you in determining the reliability of the witness. Here are some of the facts you should consider. The lapse of time between the initial observation of the third robber by the witness at the scene of the crime and at this trial, and his intervening observations of the robber from photographs. The witness' observation of the Defendant at the Counsel table here in the courtroom. The testimony of the witness on direct and cross-examination as to the basis of the witness' identification, and whether the witness was able to identify the Defendant on a previous occasion.

The essential question for you is whether Issacs is able to identify the Defendant here in

Court as the third robber because of the image which he formed from his independent observation of the third robber at the time and scene of the crime, or whether his identification here in Court is the product of suggestion on these earlier occasions when he viewed the photographs, or is it a product of suggestion here in the courtroom. The question is whether these procedures at the time he was shown the photographs was so suggestive as to give rise to a very substantial likelihood of mistaken identification.

You are to consider each Counts, I and II, separately.

If you find as to the Count which you are considering that the Government has failed to prove beyond a reasonable doubt each of the elements of the crime charged, as I have given them to you, or that the Defendant Denson aided and abetted others in the commission of the crime charged, then you should render a verdict of not guilty on that Count as to the Defendant Denson. On the other hand, if you find as to the Count which you are considering that the Government has proved beyond a reasonable doubt all of the elements of the crime charged as I have given them to you, or that the Government has proved beyond a reasonable doubt that the Defendant

Denson aided and abetted others in the commission of the crime charged, then you should convict the Defendant Denson on that Count.

Now, you are instructed that the question of possible punishments of the Defendant in the event of a conviction is of no concern of yours, and that it should not in any sense enter into or influence your deliberations. The duty of imposing sentence in the event of a conviction rests exclusively upon the Court. The function of the Jury is to weigh the evidence in the case and determine the guilt or innocence of the Defendant solely upon the basis of such evidence.

Now, when you retire to your jury room, you should treat one another with consideration and respect as I know you will. If a difference of opinion arises, your discussion should be dignified, calm, intelligent. Your verdict must be based on the evidence and the law, the evidence which was presented in this case as you remember it and the law as I have given it to you in this charge. You are each entitled to your own opinion. No juror should acquiesce in a verdict against his conscience individual judgment. Nevertheless, I would point out that no one should enter a jury room with such pride of opinion that he

would refuse to change his mind, no matter how convincing or intelligent the arguments on the part of another juror or jurors. Discussion and deliberation are part of our democratic jury process and your deliberations should be approached in that vein. Talk out your differences. Each of you should, in effect, decide the case for himself or herself after fully reviewing the evidence and discussing it with your fellow jurors with an open mind and with a desire to reach a verdict. If you do that, you will be acting in a true and democratic process of the American jury system.

There are twelve of you on this jury. The alernates will be excused with the thanks of the Court before you retire to your deliberations. Your verdict must be the unanimous verdict of all of you and it must represent an honest conclusion of each of you. I submit the case to you with every confidence that you will fully measure up to the oath that you took as members of the Jury to decide the issues submitted to you fairly and impartially and without fear or favor.

Now, members of the Jury, if you find that the Government has failed to establish the guilt of any defendant beyond a reasonable doubt, you should acquit

the Defendant. If you find that the Defendant has not violated the law, you should not hesitate for any reason to render a verdict of not guilty. I said, "any defendant". I meant this Defendant.

If you find that the Government has failed to prove that this Defendant is guilty beyond a reasonable doubt, then you should acquit him. But on the other hand, if you find that the Government has established the guilt of the Defendant beyond a reasonable doubt, you should not hesitate because of sympathy or any other reason to render a verdict of guilty.

When you retire for your deliberations, you should elect from one of your number, one of your members, to act as foreman or forelady, and your foreman or forelady will return an oral verdict in open court of either guilty or not guilty as to each Count.

Are there any exceptions? If so, I will hear you at the Bench.

(The following discussion took place at the Bench outside the hearing of the Jury.)

MR. WELCH: Nothing, thank you.

MR. MICHAELS: Your Honor, I take exception to the charge in which you discussed Alton Isaacs.

I have no quarrel with any words you said, but I feel in relating your view and recollection of the testimony of Alton Isaacs, and the one thing you didn't say was he admitted that there had been a prior description of the Defendant being a man of five-foot-seven, and by not saying it, as I listened to it, you perhaps didn't give it any weight. I didn't take you down word for word.

THE COURT: You mean Isaacs had given an earlier description?

MR. MICHAELS: That was described, several of the descriptions described the man as five-foot-seven or five-foot-eight.

(The following remark was made to the Jury in open court.)

THE COURT: In giving consideration to Isaacs' testimony in identifying the Defendant, you should consider carefully any earlier descriptions, such as the height of the third robber, the weight and the height of the Defendant here on trial, or any other earlier description, with the Defendant's actual appearance here in this case.

(The following discussion took place between the Court and Counsel outside the hearing of the Jury.)

THE COURT: Is that satisfactory?

MR. MICHAELS: Thank you, Your Honor. I don't know whether you want me to go on and raise any other points.

THE COURT: Raise them now. Don't waste time.

MR. MICHAELS: In the beginning of the Charge, you were talking about the fact that Broadwater, Jones, Mrs. Armster, and Isaacs may not be considered--

THE COURT: I said may be considered in evaluating the testimony.

MR. MICHAELS: All right. I have no other exceptions to the Charge and no other requests.

MR. WELCH: Thank you.

(The following took place in open court with the Jury present.)

THE COURT: Swear the guards.

THE CLERK: Will the guards please step forward.

(Lena Gazetti and Joseph Scaramizano sworn that you will guard the Jury.)

THE CLERK: The alternate jurors are now excused.

The Jury may now retire to consider their verdict.

(Whereupon at 11:00 the Jury retired to their deliberations.)

THE COURT: I am sending in a copy of the indictment and all exhibits to the Jury. Look them over, each of you, and see if you have any objections.